European University Institute

ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

EUDO CITIZENSHIP OBSERVATORY

PROTECTION AGAINST STATELESSNESS: TRENDS AND REGULATIONS IN EUROPE

Olivier Willem Vonk
Maarten Peter Vink
Gerard-René de Groot

May 2013

http://eudo-citizenship.eu

European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

Protection against Statelessness
Trends and regulations in Europe

Olivier Willem Vonk
Maarten Peter Vink
Gerard-René de Groot

May 2013

EUDO Citizenship Observatory
Robert Schuman Centre for Advanced Studies
in collaboration with
Edinburgh University Law School
Country Report, RSCAS/EUDO-CIT-CR 2013/1
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported by the European Commission grant agreement JLS/2007/IP/CA/009 EUCITAC and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh).
The financial support from these projects is gratefully acknowledged.

For information about the Project please visit the project website at http://eudo-citizenship.eu

List of abbreviations of international treaties

ACC	1990 African Charter on the Rights and Welfare of the Child
AmCHR	1969 American Convention on Human Rights
ArCHR	2004 Arab Charter on Human Rights
CEDAW	1979 Convention on the Elimination of All Forms of Discrimination against Women
CERD	1965 International Convention on the Elimination of All Forms of Racial Discrimination
CRCI	2005 Covenant on the Rights of the Child in Islam
CRC	1989 Convention on the Rights of the Child
CRD	2006 Convention on the Rights of Persons with Disabilities
CRS	1961 Convention on the Reduction of Statelessness
CSR	1951 Convention relating to the Status of Refugees
CSS	1954 Convention Relating to the Status of Stateless Persons
ECN	1997 European Convention on Nationality
ECSS	2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession
ICCPR	1966 Covenant on Civil and Political Rights
REC 2009/13	Recommendation CM/Rec (2009)13 of the Committee of Ministers to member states of the Council of Europe on the nationality of children.

Latin Terms

De facto	factually; in fact
De iure	legally
Ex lege	by operation of the law, automatically
Ex nunc	without retroactivity
Ex tunc	with retroactivity
Iure sanguinis	by *ius sanguinis*
Iure soli	by *ius soli*
Ius sanguinis	Lit.: right of the blood: a person acquires the nationality of a parent at birth or by the establishment of a child-parent family relationship
Ius sanguinis a matre	Lit.: right of the blood from the mother: a person acquires the nationality of the mother at birth or by the establishment of a child-mother family relationship
Ius sanguinis a patre	Lit.: right of the blood from the father: a person acquires the nationality of the father at birth or by the establishment of a child-father family relationship
Ius soli	Lit.: right of the soil: a person acquires the nationality of his country of birth

For a more extensive explanation of key terms used in this report, readers are invited to see the extensive Citizenship Glossary of EUDO CITIZENSHIP: http://www.eudo-citizenship.eu/databases/citizenship-glossary

Outline

Preface

This report presents the normative background, analytical frame and key findings of the Database on Protection Against Statelessness in Europe, developed by the EUDO CITIZENSHIP Observatory in partnership with the UNHCR Statelessness Unit.[1] The database, which was launched in March 2013, includes information on the extent to which citizenship laws in 36 European states provide sufficient protection against statelessness, in light of the most important international standards. The database is organized around a comprehensive typology of modes of protection against statelessness which outlines, in a systematic way, 17 categories of persons that are at risk of being or becoming stateless. The database is unique in its systematic comparative approach, its comprehensive geographical scope and its interactive search functionality. The database allows users to view all relevant regulations within one country or to compare different regulations across 36 European countries. For each regulation we provide precise information on provisions in national legislation, including hyperlinks to relevant laws, as well as a critical assessment, against the normative background of established international norms.

The authors would like to express their gratitude to UNHCR for co-financing the construction of the database and, in particular, Mark Manly and Radha Govil, of the UNHCR Statelessness Unit, without whom the database would not have existed. Their initial encouragement and constructive, yet critical involvement throughout the development of the database have been crucial. We also acknowledge important input in the development of our comparative typology, by Laura van Waas (Tilburg University) and Bronwen Manby (Open Society Foundations) and feedback on draft findings by Jorunn Brandvoll and Inge Sturkenboom, of UNHCR.

We are grateful also to Rainer Bauböck and Jo Shaw, co-directors of the EUDO CITIZENSHIP Observatory, for their support of this project and sharing our interest in highlighting the importance of the issue of statelessness at the Observatory. We also would like to mention, in particular, Iseult Honohan who has provided critical input in the most recent comprehensive update of the comparative information on rules on acquisition and loss of citizenship in Europe, included in the two databases on EUDO CITIZENSHIP, on which this report draws heavily. We thank Valerio Pappalardo at the Robert Schuman Centre for Advanced Studies, European University Institute for developing the technical side of the database and Emanuele Strano for additional technical support.

Finally, we would like to express our gratitude to the numerous country experts of the Observatory, without whose input and feedback our comparative work on citizenship legislation in Europe and, thus, also this study would have been impossible.

The authors

Washington, D.C. / San Domenico di Fiesole / Maastricht, May 2013

[1] See Vonk, O., M. Vink and G.R. de Groot (2013). EUDO CITIZENSHIP / UNHCR Database on Protection against Statelessness in Europe. San Domenico di Fiesole: Robert Schuman Centre for Advanced Studies, European University Institute, available at http://www.eudo-citizenship.eu/databases/protection-against-statelessness.

Goal of this study

This report summarizes the key findings from the EUDO CITIZENSHIP / UNHCR Database on Protection Against Statelessness in Europe, in terms of the extent of legal protection against statelessness in Europe. The interactive database allows users to view all relevant regulations within one country or to compare different regulations across 36 European countries. Both search types provide precise information on specific national rules on the procedures and conditions for the acquisition and loss of citizenship and the extent to which these rules provide sufficient protection against statelessness. Each assessment is grounded in an analysis of national rules in light of international norms on the protection against statelessness and refers to precise sources of international norms on safeguards against statelessness.

In this report we provide an introduction to the phenomenon of statelessness, discuss the available international standards which we use to assess national regulations, introduce the comparative typology which structures the database and present the key findings about the extent to which European states provide sufficient protection against statelessness. We end this report with some concluding remarks on the overall level of protection against statelessness in Europe, highlight some key differences between states and discuss some important caveats which should be kept in mind when interpreting these findings.

Exploring the database yourself

Readers are encouraged to explore these findings in more detail by visiting the interactive Database on Protection Against Statelessness in Europe, available at:

http://www.eudo-citizenship.eu/databases/protection-against-statelessness.

1. Statelessness: what it is, why it is there and why it matters

1.1 The global problem of statelessness

The problems related to statelessness are grounded in a constellation of complex issues such as birth registration, conflicting nationality legislation, state succession, migration and international law.[2] The phenomenon's complexity is compounded by its growing magnitude. Especially in the past two decades, the prevalence of statelessness has risen considerably:

> Since the collapse of communism in Europe in 1989, ethnic nationalism has led to the manipulative exclusion of minorities from citizenship in a number of new or successor states. During the same period in Africa, latent ethnic tensions arising from decolonization and state-building, combined with the growing significance of political rights in emerging democracies, have sparked armed conflict and marginalized racial and ethnic minorities.[3] Meanwhile, repressive governments in Asia and the Middle East perpetuate women's inequality through discriminatory citizenship rules and are using the denial or deprivation of nationality as a tool to disenfranchise unpopular ethnic groups. These concurrent phenomena are causing an acute crisis of statelessness at the dawn of the twenty-first century.[4]

It is difficult to establish who exactly has the responsibility to address the hardship that results from statelessness, as it is a long standing principle of international law that sovereign states in principle have an inviolable right to determine who receives their nationality and who does not.[5] However, the decision not to attribute or to revoke a nationality when an individual is not granted this status by any other state either, is at odds with this person's human rights.[6] Considering that national laws also govern who is allowed to legally reside in a country, people who are not citizens anywhere run the risk of not being permitted to live anywhere either. Furthermore, stateless people's rights to enter, leave, work or vote in a country may all be suspended.

Statelessness is a phenomenon not confined to the developing world or distant countries; all across the globe people lack the elementary benefit of a nationality. Europe is no exception in this regard, despite the fact that several European States having signed and ratified the two UN Conventions designed to address this issue – the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness – as well as the 1997 European Convention on Nationality.[7] These three

[2] M. Manly and S. Persaud, "UNHCR and responses to statelessness", *Forced Migration Review*, no. 32 (2009), 7. On statelessness in international law, see generally P. Weis, *Nationality and statelessness in international law*, 2nd revised ed. (Alphen aan den Rijn: Sijthoff & Noordhoff, 1979); L. van Waas, *Nationality Matters. Statelessness under international law* (Antwerp: Intersentia, 2008); M. Stiller, *Eine Völkerrechtsgeschichte der Staatenlosigkeit* (Wien: Springer, 2011).

[3] See also J.R. Campbell, "The Enduring Problem of Statelessness in the Horn of Africa: How Nation-States and Western Courts (Re)Define Nationality", *International Journal of Refugee Law* 23, no. 4 (2011).

[4] Open Society Justice Initiative, "Human Rights and Legal Identity: Approaches to Combating Statelessness and Arbitrary Deprivation of Nationality", Thematic Conference Paper (May 2006), 2.

[5] League of Nations, "Convention on Certain Questions Relating to the Conflict of Nationality Law", *Treaty Series* 179, no. 4137 (1930), 89.

[6] See generally L. van Waas, "Nationality and rights", in *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, ed. B.K. Blitz and M. Lynch (Cheltenham: Edward Elgar, 2011), 23-44.

[7] B.K. Blitz and A. de Chickera, "Editorial", *European Journal of Migration and Law* 14, no. 3 (2012); A. de Chickera, "The Human Rights of Stateless Persons in Europe – Interview with Commissioner Thomas Hammarberg", *European Journal of Migration and Law* 14, no. 3 (2012).

conventions as well as several others will be analysed in more detail later in this report. Suffice it to say for now that the 1954 Convention's most significant contribution lies in its definition of the term "stateless person" in Article 1(1). This universal definition of who qualifies as a "stateless person" is accepted as customary international law and is also relevant for the scope of application of the 1961 Convention:

> For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.[8]

All over the world, some 12 million people are estimated to be stateless.[9] This could nevertheless be a substantial underestimation, considering that many states are reluctant to admit the presence of stateless people on their territories and because stateless people are rarely counted in official statistics. Instead, if their presence is acknowledged at all, they are more often classified in undifferentiated lump-categories such as "nationality unknown" or even as "aliens" in general.[10] Moreover, as shall become clear below, 12 million people is a cautious estimate, based on a narrow definition of what constitutes statelessness.

Stateless people hail from all continents, although certain populations have traditionally been at particular risk. During the Second World War millions of Jews and Roma were stripped of their citizenship and dispersed throughout Europe.[11] The situation of all post-war refugees, many of them also stateless, precipitated the drafting of the 1951 Convention Relating to the Status of Refugees. This Convention was originally presumed to cater to the needs of stateless people too, as it was thought that all stateless people were inherently refugees as well. When this proved to be a misconception, the 1954 Convention Relating to the Status of Stateless Persons was adopted.[12] This Convention "provides for the legal status of 'stateless person' for individuals who find themselves without a nationality and guarantees a minimum standard of protection".[13] In short, it revolves around improved *protection* of people who are already stateless. As it did little in the way of *prevention* or *reduction* of statelessness, the Convention was complemented by the 1961 Convention on the Reduction of Statelessness, which deals "with the right to a nationality by identifying which state is actually responsible for conferring (or refraining from withdrawing) nationality in particular circumstances in order to prevent new cases of statelessness from arising".[14] These two legal instruments, ratified by 76 and 50 states respectively, are at the heart of the legal regime that battles statelessness.[15] In addition, two Council of Europe Conventions contain provisions which address the problem of statelessness. The first is the 1997 European Convention on

---

Mapping studies that have recently been conducted in Europe include L. Gregg, C. Nash, and N. Oakeshott, "Mapping Statelessness in The United Kingdom", UNHCR report (2011); O. Vonk and K. Hendriks, "Mapping statelessness in the Netherlands", UNHCR report (2011); C. Rustom and Q. Schoonvaere, "Mapping Statelessness in Belgium", UNHCR report (2013).

[8] See in more detail UNHCR, "Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons", (2012).

[9] UNHCR, "Action to Address Statelessness: A Strategy Note", (2010), 4.

[10] B. Frelick and M. Lynch, "Statelessness: a forgotten human rights crisis", *Forced Migration Review* 24 (2005), 66.

[11] B. Berkeley, "Stateless people, violent states", *World Policy Journal* 26, no. 1 (2009), 6.

[12] C.A. Batchelor, "The 1954 Convention Relating to the Status of Stateless Persons: Implementation Within the European Union Member States and Recommendations for Harmonization", *Refuge* 22, no. 2 (2005), 34.

[13] L. van Waas, "Statelessness: A 21st century challenge for Europe", *Security and Human Rights*, no. 2 (2009), 137.

[14] L. van Waas, "Statelessness: A 21st century challenge for Europe", 137.

[15] Ratification situation as per 10 April 2013. See http://www.unhcr.org/pages/4a2535c3d.html

Nationality (ECN), Articles 4 and 6-8 of which have a bearing on statelessness.[16] The second is the recent 2006 Convention on the Avoidance of Statelessness in Relation to State Succession (ECSS), which entered into force on 1 May 2009.[17] The ECN and the ECSS have been ratified by 20 and 6 States respectively.[18]

The global total of identified stateless persons rose, however, by another million people between 2005 and 2010, although slightly improved identification-procedures and information sharing may have caused this increase.[19] Exactly how many more stateless people we are unaware of remains unclear. Furthermore, many examples of statelessness have appeared extremely persistent. Although most Jews (re-)acquired a nationality, many Roma remain stateless to this day.[20] In Europe, the collapse of the former Soviet Union caused hundreds of thousands to become stateless; in Latvia alone a Russian-speaking minority of 340,000 people experiences great difficulty in obtaining citizenship.[21] Countless Palestinians have branched out to various European states and live stateless lives there. Outside Europe, instances of statelessness are too common to provide a comprehensive overview, but some of the worst-off populations include: numerous black Mauritanians who live as virtual slaves in a country dominated by its Arab population;[22] Kenyan Nubians of Sudanese descent who fought in the British colonial army;[23] descendants of immigrant workers in Côte d'Ivoire; the originally nomadic Bidun from Kuwait, Bahrain, Saudi Arabia and the United Arab Emirates;[24] Rohingya from Myanmar, who are consistently labelled as illegal immigrants from Bangladesh by the country's junta government.[25] Finally, many among the Karen and Hmong hill tribes in Thailand are stateless as well.[26]

In general, all these people "are victims of rampant discrimination and exploitation, political disenfranchisement, and wholesale economic and social marginalization".[27] However, before elaborating on these and other consequences of statelessness, it is useful to

[16] See also L. van Waas, "Fighting Statelessness and Discriminatory Nationality Laws in Europe", *European Journal of Migration and Law* 14, no. 3 (2012).
[17] See generally L. van Waas, "Statelessness: A 21st century challenge for Europe", 133-146.
[18] Ratification situation as per 10 April 2013. See http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG
[19] K. Southwick and M.L. Lynch, "Nationality Rights for All: A Progress Report and Global Survey on Statelessness", (2009), 28.
[20] J. Parra, "Stateless Roma in the European Union: Reconciling the Doctrine of Sovereignty Concerning Nationality Laws with International Agreements to Reduce and Avoid Statelessness", *Fordham International Law Journal* 34, no. 6 (2011), 1666-1694; C. Cahn, "Minorities, Citizenship and Statelessness in Europe", *European Journal of Migration and Law* 14, no. 3 (2012).
[21] K. Southwick and M.L. Lynch, "Nationality Rights for All: A Progress Report and Global Survey on Statelessness", 47. On the situation in Estonia, see R. Vetik, "Statelessness, citizenship and belonging in Estonia", in *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, ed. B.K. Blitz and M. Lynch (Cheltenham: Edward Elgar, 2011), 160-171; R. Vetik, "The statelessness issue in Estonia", in *Statelessness in the European Union. Displaced, Undocumented, Unwanted*, ed. C. Sawyer and B.K. Blitz (Cambridge: Cambridge University Press, 2011), 230-252.
[22] J. Harrington Reddy, "Mauritania: citizenship lost and found", in *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, ed. B.K. Blitz and M. Lynch (Cheltenham: Edward Elgar, 2011), 142-159.
[23] A. Korir Sing'Oei, "Citizenship in Kenya: the Nubian case", in *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, ed. B.K. Blitz and M. Lynch (Cheltenham: Edward Elgar, 2011), 45-65.
[24] A. Shiblak, "Arabia's Bidoon", in *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, ed. B.K. Blitz and M. Lynch (Cheltenham: Edward Elgar, 2011), 172-193.
[25] K. Southwick and M.L. Lynch, "Nationality Rights for All: A Progress Report and Global Survey on Statelessness", 36.
[26] For even more "risk groups", see, e.g., B. Frelick and M. Lynch, "Statelessness: a forgotten human rights crisis", 66; B. Berkeley, "Stateless people, violent states", 7; Open Society Justice Initiative, "Human Rights and Legal Identity: Approaches to Combating Statelessness and Arbitrary Deprivation of Nationality".
[27] B. Berkeley, "Stateless people, violent states", 7.

understand how precisely one becomes a stateless person. After all, nationality is a legal-philosophical construct, not a state of nature.[28]

1.2 Causes of statelessness

It is possible to become stateless in a considerable variety of ways. Different causes can be grouped into three categories: a) technical causes; b) causes linked to state succession and restoration; and c) causes linked to discrimination or arbitrary deprivation of nationality.[29]

Technical causes can differ widely, but they all have in common that statelessness is the (sometimes unintentional) side-effect of administrative practices. An individual can, for example, become the victim of a conflict of laws, in which two states each claim that the other is responsible for the bestowal of a nationality. This is especially likely to happen when a person's state of birth grants nationality by descent (*ius sanguinis*), while this person's parents were born in a state that attributes nationality by birth on its territory (*ius soli*).[30] Many Latin American countries issue nationality based on *ius soli* principles, which means that children born to their nationals in states adhering to the *ius sanguinis* principle are in theory at risk of statelessness.[31] A second technical cause can be found in laws that particularly affect women and children. In Yemen, for instance, nationality can by law not be passed on through the female line, which means that children of unmarried or divorced mothers (or mothers who are married to a stateless man) are born and grow up stateless. In general, exclusively patrilineal nationality legislation is widespread in the Middle East.[32] Although these practices may come across as administrative technicalities, they in fact constitute a clear form of gender discrimination.[33] Thirdly, someone can remain stateless, even though the person in question would in theory be eligible for citizenship, because of bureaucratic barriers. Nepal provides a case in point: it recently amended its nationality laws to extend citizenship to anyone born in the country before April 1990, and this included various – previously stateless – minorities. However, the poorest stateless people cannot benefit from these reforms due to prohibitive citizenship fees or long distances that need to be travelled to lodge an application.[34] In general, regardless of origins, people not registered at birth always face more difficulties in proving their right to citizenship. Lastly, some states employ a mechanism whereby automatic loss of nationality occurs, for instance after a prolonged absence from the country (although in some states a few months is already considered a "prolonged absence").[35] In addition, marriage can constitute a ground for the

[28] P. Boeles, "Het nut van nationaliteit", Afscheidscollege als hoogleraar immigratierecht (Leiden, 29 juni 2007).
[29] UNHCR, "Nationality and Statelessness: A Handbook for parliamentarians", (2008), 27-39.
[30] Equal Rights Trust, "Unraveling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", (2010), 57.
[31] It should be noted that most Latin American states have by now incorporated provisions in their nationality laws that tackle this issue.
[32] See the research that is currently being conducted by the Statelessness Programme at Tilburg University. http://www.tilburguniversity.edu/research/institutes-and-research-groups/statelessness/
[33] For more information on specifically gender-related problems facing stateless women and girls, see UNHCR, "UNHCR Handbook for the Protection of Women and Girls", (January 2008). See also UNHCR, "Background Note on Gender Equality, Nationality Laws and Statelessness", (2012).
[34] B.K. Blitz, "Statelessness, protection and equality", Refugee Studies Centre, Forced Migration Policy Briefing no. 3 (2009), 15.
[35] UNHCR, "Nationality and Statelessness: A Handbook for parliamentarians", 33.

automatic loss of citizenship: Iranian women lose their nationality when they marry a foreign national.[36]

In Europe, causes linked to state succession and restoration have been especially prominent.[37] The disintegration of both the Soviet Union and Yugoslavia each caused tremendous problems for people of whom it was unclear to which of the newly formed states they belonged. Similar problems have resulted from Czechoslovakia's split, and before that from the break-up of the Austro-Hungarian and Ottoman empires.[38] As far as restoration is concerned, when Latvia regained its independence in 1991, nationality was only granted to those who were already Latvian citizens before 1940, and to their descendants. This did not include Russians who had moved there during unity and, as Russia did not assume responsibility either, a third of the country's population became stateless.[39]

The numerically most prominent cause of statelessness, certainly on a global level, is related to the denial or withdrawal of citizenship. (We interpret the issue of withdrawal broadly by also including the revocation of citizenship due to fraud.) Discriminated minorities that are arbitrarily deprived of their citizenship at some point in their lives, or have never received it at all, abound. The 700,000 Rohingya from Myanmar constitute a striking example of how explicit a *denial* of citizenship can be. The Rohingya do not appear on a list of 135 "national races" and are therefore by law classified as "Myanmar residents", which is not a legal status at all; no rights can be derived from this status whatsoever.[40] What is more, "Myanmar consistently refers to the Rohingya as illegal immigrants from Bangladesh".[41] The most notorious instance of *withdrawal* of citizenship is probably that of the Jews living in countries occupied by Nazi-Germany during the Second World War. However, more recently (in the early 2000s) Côte d'Ivoire manifested itself in a similar vein; "when the economy turned sour and competition for the spoils of power heated up, demagogues played the stateless card, fashioning a new concept known as *Ivoirité*".[42] This xenophobic sentiment formed the foundation for the denaturalization of thousands of West African migrant workers and their children, all in an attempt at ethnic homogenization of the country. Some conventions bind their signatories to certain restrictions if statelessness could result from the withdrawal of a nationality. However, these safeguards usually cease to apply when a nationality has been acquired by fraudulent means in the first place.[43]

1.3 Consequences of statelessness

Statelessness costs people dearly and this may already become apparent soon after birth. Authorities may refuse to issue a birth certificate to a child whose parents cannot prove that

[36] Equal Rights Trust, "Unraveling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", 58.
[37] The problem of State succession, particularly in the Balkan and the Baltic States, will in the future be addressed in a separate EUDO Citizenship Comparative Analysis.
[38] B.K. Blitz and M.L. Lynch, "Statelessness and the benefits of citizenship: A comparative study", Geneva Academy of International Humanitarian Law and Human Rights/International Observatory on Statelessness (2009), 10.
[39] B.K. Blitz and M.L. Lynch, "Statelessness and the benefits of citizenship: A comparative study", 10.
[40] Equal Rights Trust, "Unraveling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", 61.
[41] Equal Rights Trust, "Unraveling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", 61.
[42] B. Berkeley, "Stateless people, violent states", 8.
[43] See e.g. the 1961 Convention on the Reduction of Statelessness, Article 8(2)b.

they hold the nationality of their country of residence.[44] Without such a birth certificate, the child in question is much more likely to experience trouble acquiring a nationality (or a host of other rights) in the future. People may experience similar hindrances in obtaining documentation to identify themselves. Considering that they are already at increased risk of discrimination and abuse by the authorities, not being able to present an ID may increase the incentive to shun participation in society altogether. Indeed, "this lack of identification means that they are often powerless to seek redress through the courts. Significant numbers of stateless people therefore face extortion from state and non-state agents as well as arbitrary taxation".[45] While access to the labour market is either tough or barred completely, stateless people can often not access national services such as public education or healthcare either. The right to own or inherit property may be restricted or fully denied. Similarly, it can be virtually impossible to start a business due to the inability to enter into contracts, obtain licences or open a bank account.[46] This way, poverty becomes an integral part of stateless life. Small-scale fraud can be commonplace, as the stateless assume fake identities to register a marriage or businesses, or purchase falsified documents.

On a more macro-scale, statelessness may hamper development efforts because "the concept of statelessness introduces a power-dynamic that is particularly challenging for the design and delivery of effective pro-poor social development programmes".[47] Furthermore, the marginalisation and disenfranchisement suffered by stateless people have negative effects for regions at large. "The refusal to grant citizenship to a large number of titular residents may severely affect the balanced integration of all groups in society. Thus, it may represent a security threat".[48] States have had to suffer the consequences in places as diverse as Bangladesh, the Great Lakes region in Africa and in Israel and the Palestinian Occupied Territories. In these circumstances, "states lose in terms of lower economic output and a reduced fiscal base. The greatest losers, however, remain the individuals who are unable to pursue their daily existence free from interference and who have difficulties actualising their rights".[49]

Often, non-recognition of citizenship also leads to the denial of a person's right to reside in the country, which results in a heightened chance of expulsion from one's homeland. Even if this does not occur, it is rather conceivable that a stateless person would wish to leave behind all of the above. Unfortunately, legitimate international travel is not an option, resulting in significantly increased exposure to human smugglers and traffickers. Refugees International has reported that stateless women and girls are lured into prostitution abroad because an absent nationality precluded the possibility of decent education and job opportunities.[50] Subsequently, victims taken across borders have no government to rely upon to defend their interests. Whether one is outside one's country of origin or habitual residence as a result of trafficking or following voluntary departure, return poses a practical impossibility for most stateless persons. When abroad, many spend months or even years in

[44] L. van Waas, "The children of irregular migrants: a stateless generation?", *Netherlands Quarterly of Human Rights* 25, no. 3 (2007); P. Gerber, A. Gargett, and M. Castan, "Does the right to birth registration include a right to a birth certificate?", *Netherlands Quarterly of Human Rights* 29, no. 4 (2011).
[45] B.K. Blitz, "Statelessness, protection and equality", 6.
[46] UNHCR, "Action to Address Statelessness: A Strategy Note", 14.
[47] B.K. Blitz, "Statelessness, protection and equality", 3.
[48] Address by K. Vollebaek, OSCE High Commissioner on National Minorities, to the Expert Consultation on "Issues related to minorities and the denial or deprivation of citizenship", convened by the UN Independent Expert on Minority Issues, G. McDougall, Geneva, 6 December 2007. Available at http://www.osce.org/files/documents/a/4/29915.pdf.
[49] B.K. Blitz and M.L. Lynch, "Statelessness and the benefits of citizenship: A comparative study", 7.
[50] K. Southwick and M.L. Lynch, "Nationality Rights for All: A Progress Report and Global Survey on Statelessness", 3.

alien detention because deportation proves problematic with no official country of nationality to which they can be returned.[51] In practice, "he vast majority of such problems go undetected".[52]

2. International standards

2.1 Introduction

The Convention on the Reduction of Statelessness[53] ("the 1961 Convention") was adopted by the United Nations fifty years ago on 30 August 1961, marking an important step in creating a legal framework to battle statelessness. UNHCR has recently issued Guidelines on Interpreting Articles 1-4 of the 1961 Convention on the Reduction of Statelessness and Preventing Statelessness among Children. These Guidelines have been incorporated in the comparative analysis in section 4 and will therefore not be separately discussed here. In this section we wish to contextualize the safeguards contained in the 1961 Convention by examining relevant provisions of multilateral treaties on the avoidance and reduction of statelessness that preceded the 1961 Convention, and influenced the formulation of Articles contained therein (section 2.2).

Next, an overview of the drafting history of the 1961 Convention will be provided, followed by a brief overview of the obligations contained in the Convention (section 2.3). We also survey the accession record of the 1961 Convention and the declarations and reservations made by several Contracting States.

After this overview of the context, drafting history, and status of the 1961 Convention, we turn to examining multilateral human rights instruments developed since the 1961 Convention was adopted, and particularly their rules pertaining to the avoidance and reduction statelessness (section 2.4).[54]

2.2 The 1961 Convention against the background of older international instruments relating to the prevention and reduction of statelessness

i. Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws with a Protocol on Statelessness (12 April 1930)[55]

The 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws was the first international treaty to enshrine general rules on the avoidance and reduction of statelessness. Seven Articles relate to statelessness issues. The Convention was initiated by the

[51] See also Equal Rights Trust, "Guidelines to Protect Stateless Persons from Arbitrary Detention: Introduction", *European Journal of Migration and Law* 14, no. 3 (2012).
[52] H. Massey, "UNHCR and De Facto Statelessness", UNHCR Legal and Protection Policy Research Series (Geneva: UNHCR, 2010), 43.
[53] UNTS 989, 175.
[54] Compare the Europe-focused survey of L. Pilgram, "International Law and European Nationality Laws", EUDO Citizenship Comparative Report (2011).
[55] LNTS vol. 179, 89.

League of Nations. It came in force on 1 July 1937. At the time of writing, 20 States are party to this Convention.[56]

Article 7 concerns expatriation permits (i.e. loss of nationality on application of the person involved). Such permits should only cause the loss of the nationality of the State which issues the permit if the person involved possesses another nationality or "unless and until" he or she acquires another nationality. In the latter case the loss of the first nationality is conditional on the acquisition of the other nationality. Furthermore in that case, the expatriation permit shall contain a period within which the other nationality has to be acquired. The permit shall lapse if the holder does not acquire a new nationality within the period fixed.

Two Articles address the influence of marriage on the nationality of women. Loss of nationality due to marriage with a foreigner shall be conditional on the acquisition of the nationality of the husband (Article 8). The same applies if the nationality of the husband changes during marriage. This may only cause the loss of nationality by his wife if she acquires her husband's new nationality (Article 9). The Convention therefore allows for exceptions to the principle of unity of nationality within the family (the so-called unitary system) if necessary for the avoidance of statelessness. This was the first step towards a system which allows married women to have a nationality of their own (dualist system).[57]

The child of (legally) unknown parents shall have the nationality of the country of birth (Article 14). Until the contrary is proved, a foundling is presumed to have been born on the territory of the State in which it was found. This is the first enunciation in international law of the principle of granting citizenship to foundlings.

Countries that do not provide for the automatic acquisition of nationality to all children born on their territory must nevertheless grant citizenship to those children born on their territory to parents who have no nationality or are of unknown nationality. This obligation is weak, however, because the Convention provides that "the conditions governing the acquisition of its nationality in such cases" shall be determined by States (Article 15).

A stronger obligation on the State of birth is contained in the Protocol Relating to a Special Case of Statelessness[58] belonging to the 1930 Hague Convention. The Protocol, however, only directs States to grant their nationality to children born in their territory who would otherwise be stateless but are nevertheless born to a mother who possesses the nationality of the country of birth. The Protocol also came into force on 1 July 1937. At the time of writing, 23 States are party to the Protocol.[59]

Article 1 of that Protocol reads:

> In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State.

[56] Of the Parties to the 1961 Convention, nine are also bound by this Convention (Australia, Brazil, Kiribati, Lesotho, Netherlands, Norway, Swaziland, Sweden and the United Kingdom). See http://treaties.un.org/pages/LONViewDetails.aspx?src=LON&id=512&lang=en.

[57] See on the evolution from a unitary system to a dualist system: Final report on "Women's equality and nationality in international law" of International Law Association (London Conference 2000), available at http://www.unhcr.org/3dc7cccf4.html. Compare G.-R. de Groot, "Equality of Women and Men in Nationality Law", in *The Women's Convention Turned 30: Achievements, Setbacks, and Prospects*, ed. I. Westendorp (Cambridge-Antwerp-Portland: Intersentia, 2012), 185-200.

[58] LNTS 179, 115.

[59] Of the Parties to the 1961 Convention, six are also bound by this Protocol (Australia, Brazil, Kiribati, Lesotho, Netherlands, Niger).

A *ius sanguinis* State is therefore obliged to grant its nationality *ex lege* to children born in its territory if the mother is a national and father is stateless or of unknown nationality. The Protocol requires in such cases that States grant their nationality on the basis of a combination of *ius soli* and *ius sanguinis a matre*. The Protocol would not cover instances in which the father possesses a nationality but cannot confer it on the child under the nationality law of his State.

The scope of application of the Protocol, however, is narrower than that of Article 15 of the 1930 Hague Convention. The obligations of the Protocol are not triggered by the potential statelessness of a child, but rather by the fact whether the father is "without nationality or of unknown nationality". The Protocol does not apply if the father possesses a nationality but cannot transmit his nationality to his child. On the other hand, the Protocol is not limited to those who can establish that they are stateless, but rather it is sufficient to establish that a father's nationality is unknown in order for the Protocol to apply.

Articles 16 and 17 of the Convention prescribe that loss of nationality by legitimation, recognition or adoption by a foreigner shall be conditional on the acquisition by the child of the nationality of another State by the change in civil status.

ii. Convention on the Nationality of Women (Montevideo, Uruguay, 26 December 1933)[60]

Equal treatment of men and women with respect to nationality rights was first prescribed by a regional treaty in the Americas. The 1933 Convention on the Nationality of Women concluded in Montevideo declares that "[t]here shall be no distinction based on sex as regards nationality, in their legislation or in their practice". This general rule of gender equality for nationality matters rendered provisions such as Articles 8 and 9 of the 1930 Hague Convention or its Protocol superfluous for States parties in the Americas. The Convention entered into force on 29 August 1934 and remains binding on 17 States.[61]

Another Convention on nationality issues was concluded in Montevideo on 26 December 1933. Article 6 of this Convention on Nationality[62] reaffirms the core rule of gender equality as regards nationality as enshrined in the 1933 Convention on the Nationality of women.[63]

iii. Universal Declaration of Human Rights (New York, 10 December 1948)

After the Second World War, the Universal Declaration of Human Rights[64] (UDHR) codified "nationality" as a human right in its Article 15, which reads:

> (1) Everyone has the right to a nationality.
>
> (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

[60] American Journal of International Law 1934, Special Supplement p. 61.
[61] Of the Parties to the 1961 Convention Brazil, Costa Rica, Guatemala, Panama and Uruguay are also bound by this Convention. See http://www.oas.org/Juridico/english/sigs/a-33.html.
[62] Of the Parties to the 1961 Convention Brazil and Panama are also bound by this Convention. See for a survey of the Contracting States: http://www.oas.org/Juridico/english/sigs/a-34.html.
[63] American Journal of International Law 1934, Special Supplement p. 63.
[64] Resolution 217 A (III) of 10 December 1948 adopted by the General Assembly of the United Nations.

The weakness of Article 15 is that it does not indicate which nationality a person may have a right to. Moreover, it is subject to discussion under which circumstances one must conclude that a deprivation is arbitrary.[65] Furthermore, the Universal Declaration is not an international treaty and is therefore – in spite of the high moral standard – not directly binding upon the Member States of the United Nations. Nevertheless, international law scholars recognize that a number of provisions of the Universal Declaration have acquired the status of customary international law. To be sure, the principles of Article 15 have influenced treaty obligations and the principle that everyone has a right to a nationality is repeated in numerous binding international treaties, including Article 5(d)(iii) of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, Article 24(3) of the 1966 International Covenant on Civil and Political Rights, and Article 7(1) of the 1989 Convention on the Rights of the Child, as well as in regional treaties such as Article 20(1) of the 1969 American Convention on Human Rights, Article 6(3) of the 1990 African Charter on the Rights and Welfare of the Child, Article 4(a) of the European Convention on Nationality and Article 29(1) of the 2004 Arab Charter on Human Rights.

The rule that arbitrary deprivation of a nationality is forbidden also follows from Article 5(d)(iii) of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, Article 8(1) of the 1989 Convention on the Rights of the Child (no "unlawful interference"), Article 19(1)(a) and (b) the 2006 Convention on the Rights of Persons with Disabilities, as well as in regional treaties such as in Article 20(3) of the 1969 American Convention on Human Rights, Article 4(c) of the European Convention on Nationality and Article 29(1) of the 2004 Arab Charter on Human Rights.

iv. Convention relating to the Status of Stateless Persons (New York, 28 September 1954)[66]

In 1954, a UN Convention relating to the Status of Stateless Persons was opened for signature. The aim of the Convention is to guarantee minimum rights for stateless persons. It was originally intended as a Protocol to the 1951 Convention relating to the Status of Refugees, but was deferred for independent consideration as a standalone treaty given the unique status of stateless persons.[67] Despite many similarities in the protections provided to refugees and stateless persons under the 1951 and 1954 Conventions, the two diverge on several key issues. The 1954 Convention entered into force on 6 June 1960 and is binding on 76 States parties at the time of writing.[68]

The 1954 Convention's most significant contribution is the definition of the term "stateless person" in Article 1(1) of this Convention:

> For the purpose of this Convention, the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law.

---

[65] For a general overview of these issues see UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34, available at http://www.unhcr.org/refworld/docid/4b83a9cb2.html. Compare on the arbitrary interpretation of loss provisions: G.-R. de Groot, "Nationaliteitsrecht", in *Personen- en familierecht (looseleafe edition)* (Deventer: Kluwer, 2012), Inleiding, Nr. 189, pp. 225-228.

[66] UNTS 360, 130. G.S. Goodwin-Gill, "Introduction to the Convention relating to the Status of Stateless Persons", United Nations Audiovisual Library of International Law Convention relating to the status of stateless persons.

[67] UNTS 189, 137.

[68] Most Parties to the 1961 Convention are also bound by this Convention, with the exception of Canada, Jamaica, Moldova, Niger, New Zealand, and Paraguay. See http://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-3.en.pdf.

This universal definition of who qualifies as a "stateless person" is accepted as customary international law and is also relevant for the scope of application of the 1961 Convention. Article 1(2) of the 1954 Convention excludes some categories of persons from the personal scope of the Convention.[69]

The 1954 Convention contains only one provision that regulates States' nationality laws. Article 32 prescribes the Contracting States to "as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings".

v. Convention on the Nationality of Married Women (New York, 20 February 1957)[70]

As discussed above, the 1930 Hague Convention still accepted the unequal treatment of men and women in nationality law as a matter of fact, but provided for rules which try to avoid that this unequal treatment would create statelessness. By contrast, the 1933 Montevideo Convention prescribed complete equality in nationality matters for States parties in the Americas. The Convention on the Nationality of Married Women, initiated by the United Nations and concluded in New York in 1957, took an intermediate position. Article 1 of this convention provided that "neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife". This principle rendered the statelessness avoiding provisions of Articles 8 and 9 of the 1930 Hague Convention obsolete.

The 1957 New York Convention entered into force one year after it was opened for signature on 11 August 1958. To date, 80 States are Contracting Parties.[71] Of note, the Netherlands have denounced this Convention in recent years, because it contains some rules which conflict with the complete equal treatment of men and women in nationality law as prescribed by the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.[72]

---

[69] Article 1(2) read as follows:

2. This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(a)They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

[70] UNTS 309, 65.

[71] A clear majority of the Parties to the 1961 Convention are also bound by this Convention, with the exception of Armenia, Benin, Bolivia, Chad, Costa Rica, Croatia, Kiribati, Liechtenstein, Moldova, Netherlands, Niger, Nigeria, Panama, Portugal, Senegal, Serbia, Turkmenistan and Uruguay. See http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XVI~2&chapter=16&Temp=mtdsg3&lang=en.

[72] See G.-R. de Groot, "Equality of Women and Men in Nationality Law".

2.3. The drafting history of the 1961 Convention

In order to implement the right to a nationality as enshrined in Article 15 of the Universal Declaration of Human Rights, a resolution of the UN Economic and Social Council (ECOSOC) adopted in August 1950 instructed the International Law Commission to begin work on a draft convention (or conventions) for the elimination of statelessness.[73]

A first report on statelessness was prepared by ILC Special Rapporteur Manley Hudson.[74] Pre-drafts for a Convention were prepared by his successor Roberto Córdova, with assistance of Paul Weis, and submitted to the International Law Commission in March 1953.[75] The International Law Commission adopted two different drafts: one on the elimination of statelessness and another on the reduction of statelessness.[76]

The desirability of a Convention dealing with eliminating or at least reducing statelessness was underscored by resolution 896 (IX) of the General Assembly of the United Nations adopted on 4 December 1954.

The Secretary-General convened the United Nations Conference on the Elimination or Reduction of Future Statelessness, which met at the European Office of the United Nations at Geneva from 24 March to 18 April 1959 and reconvened at the Headquarters of the United Nations in New York from 15 to 28 August 1961.

The Conference decided to take the draft Convention on the Reduction of Statelessness as a starting point for discussion and deliberation. The draft Convention for Elimination of Statelessness was considered to be less suitable, because of its strong focus on applying the *ius soli* principle as a default rule in order to avoid statelessness. This could – in the opinion of many States represented at the Conference – discourage traditional *ius sanguinis* States from accepting the Convention.[77]

The Convention on the Reduction of Statelessness was finally adopted on 30 August 1961 and entered into force on 13 December 1975, two years after the sixth accession (see Article 18(1)).

Overview of the 1961 Convention

The object and purpose of the 1961 Convention is not the complete elimination of statelessness, but the reduction of cases of statelessness at birth and of the causes of statelessness by the automatic (*ex lege*) loss of nationality later in life or through deprivation of nationality.[78]

It was an important development of international law that the 1961 Convention gives a child who would otherwise be stateless the right to acquire the nationality of its country of birth through one of two means. First, a State may grant its nationality to otherwise stateless

[73] Resolution 319, B III.
[74] UN Doc A/CN.4/50.
[75] UN Doc A/CN.4/75; see also: http://untreaty.un.org/ilc/documentation/english/a_cn4_75.pdf
[76] UN Doc. A/ 2693, p.3; Yearbook of the ILC 1953 II, p. 167-169; American Journal of International Law 1955, Supplement, p. 6-12. See also http://untreaty.un.org/cod/avl/historicarchive.html
[77] Summary Record of the 6th Plenary Meeting, A/CONF.9/ SR.6 (31-3-1959), p. 1-3.
[78] The Convention uses the expression "loss of nationality" for loss by operation of law (*ex lege)* and the term "deprivation" where the loss is initiated by the authorities of the State.

children born in its territory automatically by operation of law (*ex lege*). The second alternative is that a State may grant nationality to otherwise stateless persons born in their territory later upon application. The grant of nationality on application may, according to Article 1(2), be subject to one or more of four conditions as discussed in greater detail in the comparative analysis (section 4) of this report.

The Convention further includes provisions in favour of foundlings (Article 2), on acquisition of the nationality of the mother by descent if the child was born in her country's territory and would otherwise be stateless (Article 1(3)), acquisition of the nationality of a parent by descent via an application procedure for individuals who do not acquire nationality of the country of their birth (Article 1(4), and on acquisition of the nationality of a parent by descent for individuals born abroad who would otherwise be stateless (Article 4). Article 1(4) and Article 4(2) allow exceptions to their rules under some circumstances.

Loss of nationality (*ex lege*) is, in principle, prohibited by the 1961 Convention, if this would cause statelessness (Articles 5-8). But two exceptions are expressly allowed. First, Article 7(4) of the 1961 Convention permits loss of nationality by operation of law for naturalized persons who reside abroad for a period not less than seven consecutive years if the individual fails to declare to the appropriate authority an intention to retain the nationality.[79] Second, the 1961 Convention allows for the loss of nationality by operation of law for nationals born abroad, if they do not take residence in the territory of the State before the expiration of one year after attaining the age of majority or do not register before the expiration of that period.[80]

Furthermore, Article 8(2)(b) of the 1961 Convention allows deprivation of nationality (i.e. not loss *ex lege* but on initiative of the authorities) even if a person would be rendered stateless, if "the nationality has been obtained by misrepresentation or fraud".[81]

Finally, Article 8(3) allows a Contracting State to retain some specific grounds for deprivation of nationality even with statelessness as a consequence. But these grounds must exist in the nationality law of a State at the time of that State's ratification or accession to the 1961 Convention and a State must make a declaration upon ratification or accession in order to maintain (one or more of) these grounds for loss.

Deprivation of nationality on racial, ethnic, religious or political grounds is absolutely forbidden (Article 9).

Article 10 deals with the avoidance of statelessness in cases of transfer of State territory.[82]

---

[79] Resolution II accepted during the Final Act in which the Convention was adopted recommends that Contracting States "take all possible steps to ensure that such persons are informed in time of the formalities and time limits to be observed if they are to retain their nationality". See for the application of this ground for loss in 33 European States: G.-R. de Groot and M.P. Vink, "Loss of Citizenship: Trends and Regulations in Europe", EUDO Citizenship Comparative Report (2010), Section 6 and Table 4.

[80] Resolution II described in the next footnote is of course also relevant for this type of loss. See for the application of this ground for loss in 33 European States: G.-R. de Groot and M.P. Vink, "Loss of Citizenship: Trends and Regulations in Europe", Section 6 and Table 4.

[81] It should be noted, that the European Convention on Nationality allows only for this category statelessness as a consequence. For the application of this ground for loss in 33 European States, see G.-R. de Groot and M.P. Vink, "Loss of Citizenship: Trends and Regulations in Europe", Section 3 and Table 2.

[82] See on that issue the European Convention on the avoidance of statelessness in relation to State succession of 19 May 2006, CETS 200. Compare also the ILC Draft Articles on nationality of natural persons in relation to the succession of States at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/3_4_1999.pdf.

Articles 11 and 14 provide for the establishment of a body within the United Nations with special responsibility for reducing statelessness and contain the obligation to submit disputes between States on statelessness issues to the International Court of Justice.

Article 12 gives some rules on transitory issues providing in essence that if a State opts for the grant of its nationality to children born on their territory who would otherwise be stateless, this obligation only applies for children born on the territory of that State after the entry into force of the Convention for that State. However, if a State opts for an application procedure in accordance with the provisions of Article 1(1) the rules also apply for otherwise stateless children born before the entry into force for the State involved. This is also the case for Article 1(4) and the scope of the application procedure of Article 4. Article 13 expressly allows the adoption of rules in domestic law or in treaties, which are more conducive to the reduction of statelessness. Article 15 gives rules on the application of the Convention to non-metropolitan territories of a Contracting State. Articles 16-21 address processes for signature, ratification and accession to the Convention and its entry into force.

Four resolutions were adopted in the Final Act of the 1961 Convention. The most important of these recommends that *de facto* stateless persons[83] should "as far as possible" be treated as *de iure* stateless persons in order to enable them to acquire an effective nationality. The other resolutions provide for guidance regarding the interpretation of certain terms used in the Convention or recommend a certain administrative practice.

Reservations and declarations entered by States Parties

To date, only two Contracting States have made reservations to the 1961 Convention. Niger and Tunisia both made reservations with respect to Articles 11 and 14, whereas Niger also made a reservation to Article 15. France signed the 1961 Convention in 1962 and made reservations to Articles 11 and 14 at that time, but has not yet ratified the Convention.

Seven States (Austria, Brazil, Ireland, Jamaica, New Zealand, Tunisia and the United Kingdom) made a declaration reserving the right to deprive a national on one or more of the grounds listed in Article 8(3), which would result in statelessness. At the moment of signature, France also made a declaration regarding Article 8. The declaration made by Tunisia, however, addresses issues that are beyond the permissible scope for reservations set forth in Article 8(3) and is therefore contrary to the terms of the treaty. Five Contracting States (Finland, Germany, Netherlands, Norway and Sweden) objected to this declaration.

The limited number of State parties to the 1961 Convention

Although the 1961 Convention does not proscribe statelessness completely and still provides States a margin of discretion on certain points for regulating nationality, only a limited, but evidently increasing, number of States are party to the 1961 Convention indicating that many

[83] See on this term paragraph 7 of the Guideline on the Definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons with reference to the *Summary Conclusions of the Expert Meeting on the Concept of Stateless Persons under International Law* (Prato, May 2010). The Prato expert meeting concluded on the following operational definition for the term: "*De facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country.
Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality".

States still hesitate to accept the rules prescribed therein.[84] From 1961 until 1995 there was no international agency promoting accession. That changed when the UN General Assembly requested that UNHCR undertake promotion activities with respect to both Statelessness Conventions. To date, 49 States are party to the 1961 Convention. Three additional States have signed the Convention but have not yet ratified it.

The 1961 Convention came in force on 13 December 1975, two years after the sixth ratification (see Article 18(1)). At that moment Australia, Austria, Ireland, Norway, Sweden, United Kingdom were bound by the Convention.

Between 1975 and 1990 nine States acceded to the Convention (Bolivia, Canada, Costa Rica, Denmark, Germany, Kiribati, Libya, Netherlands and Niger). By 1990, 15 States were bound by the Convention.

Between 1990 and 2000 only six more countries became Contracting parties (Armenia, Azerbaijan, Bosnia and Herzegovina, Chad, Latvia and Swaziland). However, in the period 2000-2010, 16 States acceded to the Convention (Albania, Brazil, Czech Republic, Finland, Guatemala, Hungary, Lesotho, Liberia, Liechtenstein, New Zealand, Romania, Rwanda, Senegal, Slovakia, Tunisia and Uruguay).

In 2011 five States (Benin, Croatia, Nigeria, Panama and Serbia) acceded to the Convention during the year marking the 50th anniversary of the 1961 Statelessness Convention. At a ministerial-level meeting convened by UNHCR in the 2011 commemorations year, over 20 States pledged to accede to the 1961 Convention. In 2012 seven States acceded (Bulgaria, Ecuador, Honduras, Paraguay, Portugal, Moldova and Turkmenistan). The rapidly growing number of accessions may be explained in part by increased promotion of accessions to the statelessness conventions by UNHCR.

The geographical division of the Contracting States shows that the level of concentration of accessions is greatest in Europe (24 States of which 15 States are Member of the European Union), followed by Africa (11 States), the Americas (10 States) and Oceania, including Australia and New Zealand (three States). Turkmenistan is the only Asian State which thus far acceded to the Convention.

2.4 Multilateral treaties and other international legal instruments with relevance for avoidance and reduction of statelessness adopted since 1961

Although the Universal Declaration on Human Rights is itself not a binding international treaty, several international and regional human rights treaties have been adopted over the last 50 years that enshrined the universal right to nationality. Some of these multinational treaties contain further provisions relevant for regulating the acquisition and loss of nationality. This subsection first describes the international treaties, then the regional ones, addressing their relevancy for interpreting the obligations of the 1961 Convention.

I. International Treaties

[84] After a half century, the status of ratifications could be better for an international treaty initiated by the United Nations. On the low number of accessions, see L. van Waas, *Statelessness under international law*, 203-204.

a. International Convention on the Elimination of all Forms of Racial Discrimination (New York, 21 December 1965)[85]

The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) was opened for signature in 1965.[86] At the time of writing, 176 States are bound by this Convention. With the exception of Kiribati, all Contracting States of the 1961 Convention are also party to this Convention.[87]

Article 5 of the Convention obliges the States Parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of a number of enumerated rights, including "the right to nationality" as set forth in Article 5(d)(iii). The ICERD therefore prohibits racial discrimination in law and practice with regard to acquisition, loss and deprivation of nationality.

General Recommendation No. 30 on Discrimination Against Non-Citizens (2004) of the Committee on the elimination of racial discrimination contains several principles promoting the access to citizenship. Principle 16 of that General Recommendation is of particular importance: "Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children".

The 1961 Convention reinforces the prohibition found in the ICERD by proscribing deprivation of nationality on discriminatory grounds. Article 9 of the 1961 Convention establishes that Contracting States may not deprive anyone of their nationality on racial, ethnic, religious, or political grounds.[88]

b. International Covenant on Civil and Political Rights (New York, 16 December 1966)[89]

The International Covenant on Civil and Political Rights (ICCPR) was concluded in New York in 1966. At the time of writing, 167 countries are bound by this Convention. With the exception of Kiribati, all Contracting States of the 1961 Convention are States parties to the ICCPR.[90]

Article 24(3) of the ICCPR guarantees that "[e]very child has the right to acquire a nationality". The ICCPR, however, does not indicate to which State a child may claim his or her right to nationality. Moreover, Article 24(3) does not specify that a child has the right to acquire a nationality at birth; it only guarantees a "right to acquire a nationality" (in the French language version: "droit d'acquérir une nationalité"). In this respect, the provisions of the 1961 Convention are considerably more concrete.

Nevertheless, an important development of the ICCPR is that it articulates the right of a child to acquire a nationality.[91] This imposes on the Contracting States the obligation to

[85] UNTS 660, 195.
[86] The Convention was adopted by the General Assembly of the UN in resolution 2106 (XX) of 21 December 1965.
[87] See http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en.
[88] In light of the universal prohibition on racial discrimination, efforts should be made to reform the nationality legislation of Liberia, among that of other countries that continue to maintain differential treatment based on race for acquisition of citizenship. See B. Manby, *Struggles for Citizenship in Africa* (London: Zed Books, 2009), 42-44 with further references and examples.
[89] UNTS 999, 171.
[90] See http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.
[91] This term should be interpreted as "every human being below the age of 18 years unless, under domestic law applicable, majority is attained earlier". See M. Nowak, *U.N. Covenant on Civil and Political Rights, ICCPR*

implement the provision in a way which gives children a meaningful way to exercise their right to acquire a nationality before (s)he reaches the age of majority. This influences the obligations of States under Article 1(1) in conjunction with Article 1(2)(a) of the 1961 Convention: in light of ICCPR Article 24(3) it is no longer acceptable to postpone the right to acquire the nationality of the country of birth under the application procedure until the age of 18 years.

In his commentary on the ICCPR, Manfred Nowak concludes that Article 24(3) "grants at least a subsidiary *jus soli* for all children born or found on the territory of a State party who would be stateless without recognition of this right".[92] This right is subsidiary, according to Nowak, because it only applies "when the child does not already have a claim – e.g., due to filiation or to a declaration by his or her parents – to some other nationality".[93]

ICCPR Article 24(3) should be read in conjunction with Article 3 (equal rights of men and women) and Article 26 (a free-standing non-discrimination provision which "prohibits discrimination in law or in fact in any field regulated or protected by public authorities",[94] including acquisition, deprivation and loss of nationality). In that light the Human Rights Committee stressed in General Comment No. 17 on Article 24:[95]

> While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.

c. Convention on the Elimination of all Forms of Discrimination against Women (New York, 18 December 1979)[96]

Of paramount importance for the equal treatment of men and women – also in nationality law – is the 1979 Convention on the Elimination of all Forms of Discrimination of Women (CEDAW).[97] At the time of writing, 187 States are bound by CEDAW and all Contracting States of the 1961 Convention are also States party to CEDAW.[98]

CEDAW Article 9 prescribes:

Commentary, 2nd ed. (Kehl: N.P. Engel, 2006), 550-551 with reference to Article 551 of the Convention of the Rights of the Child.

[92] M. Nowak, *U.N. Covenant on Civil and Political Rights, ICCPR Commentary*, 561.

[93] Nowak further comments that "[p]ursuant to domestic laws, this right may be acquired *ex lege*, by declaration or by the granting of it". While acquiring nationality as a matter of law versus requiring a declaration is in line with the alternatives offered by articles 1(1) and 1(2) of the 1961 Convention, it shows that Nowak uses *ius soli* citizenship here to describe a form of contingent acquisition of citizenship *ius soli*. Compare I. Ziemele, *A Commentary on the United Nations Convention on the Rights of the Child, Article 7: The Right to Birth Registration, Name and Nationality, and the Right to Know and be Cared for by Parents* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), 25.

[94] Human Rights Committee, General Comment 18, paragraph 12.

[95] Adopted at the thirty-fifth session of the Human Rights Committee, on 7 April 1989. Available at http://www.unhcr.org/4517ab402.html.

[96] UNTS 660, 195.

[97] See on this Convention G.-R. de Groot, "Equality of Women and Men in Nationality Law".

[98] See http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

> 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
>
> 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

The second sentence of Article 9(1) repeats, albeit with slightly different wording, the language of the 1957 Convention on the Nationality of Married Women and is therefore not new. The significant contribution of CEDAW Article 9(2) is that it prescribes women equal rights as men with respect to the right to transmit nationality to their children.[99] It does not allow giving preference to the nationality of a father or a mother and therefore also influences the obligations of States under Articles 1(3)-(5) and Article 4(1) of the 1961 Convention as is discussed in section 4 of this report.

First, as a consequence of Article 9(2) a State may not provide for different rules regarding the transmission of nationality by fathers or mothers. This applies not only for children born in the territory of the State of which the parents are also nationals, but also for children born to nationals abroad. Consequently, more children born outside the country of their parents acquire a nationality by either paternal or maternal descent.[100] Therefore, fewer children need the protection of Articles 1(4)-(5) or Article 4.

Second, Article 1(4) and Article 4(1) of the 1961 Convention stipulate that if the parents of an otherwise stateless child did not possess the same nationality at the time of birth "the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State". It is obvious that in light of Article 9(2) the priority of the nationality of a parent may not depend on a gender-discriminatory criterion, but only on a gender neutral factor like the mutual consent of the parents. In practice, most States no longer apply any priority anymore, but rather provide – sometimes under certain conditions – for nationality to be conferred by descent either through fathers or mothers.

Third, Article 1(3) of the 1961 Convention which obliges the State of the nationality of the mother to grant its nationality to an otherwise stateless child born in its territory by cumulating *ius soli* and *ius sanguinis a matre* (in other words upon condition that a child was born in the territory of the country of nationality of its mother) must in light of CEDAW Article 9(2) also be applied in favour of an otherwise stateless child born in the territory of a State to a father who is a national of that State.

d. Convention on the Rights of the Child (New York, 20 November 1989)[101]

Articles 7 and 8 of the 1989 Convention on the Rights of the Child (CRC) render the obligations set forth in ICCPR Article 24(3) slightly more concrete. At the time of writing, all UN Members States with the exception of the United States and Somalia (i.e. 194 countries) are bound by the

[99] Of the Contracting States to the 1961 Convention Tunisia made a reservation in respect to article 9(2). Since the modification of the Tunisian nationality act in December 2010, this reservation can be withdrawn.
[100] *Iure sanguinis*, either *a patre* or *a matre*. See also the judgment of the European Court of Human Rights 11 October 2011 in *re Genovese v Malta*, Appl. 53124/09, where the Court decided that differential treatment in respect of the acquisition of the nationality of a parent of children of a Maltese father and children of a Maltese mother violates article 8 in conjunction with article 14 of the European Convention of Human Rights.
[101] UNTS 1577, 3.

CRC, rendering it one of the most universally ratified Conventions. All Contracting States of the 1961 Convention are also party to the CRC.[102] The relevant provisions of the CRC read as follows:

> Article 7
>
> 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
>
> 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.
>
> Article 8
>
> 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
>
> 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 7(1) neither indicates to which nationality a child may have a right, nor does it guarantee that the nationality is acquired at birth.[103] Rather, Article 7(1) follows the wording of ICCPR Article 24(3) and not that of Principle 3 of the UN Declaration of the Rights of the Child adopted in 1959,[104] which states that "the child shall be entitled *from his birth* (…) to a nationality" (emphasis added).

The meaning of Article 7 might be nuanced according to the different language versions of the CRC – Arabic, Chinese, English, French, Russian, and Spanish – all of which are equally authentic.

Former Chairperson of the UN Committee on the Rights of the Child, Jaap Doek, observes that "the drafters of the ICCPR felt that a State could not accept an unqualified obligation to accord its nationality to every child born on its territory regardless the circumstances". [105] He also emphasizes that the CRC Committee does not suggest that State Parties should introduce "the *jus soli* approach", but rather that "all necessary measures are taken to prevent the child from having no nationality",[106] which is similar to the approach adopted by the Human Rights Committee.[107]

Those measures should certainly not only be taken by the country of birth of the child, but also by the country of the nationality of the parent(s). Evidently, the obligations imposed on States by CRC Article 7(2) are not only directed to the country of birth of a child, but to all

[102] See http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.
[103] Of the Contracting States to the 1961 Convention, Tunisia made following reservation "The Government of the Republic of Tunisia considers that article 7 of the Convention cannot be interpreted as prohibiting implementation of the provision of national legislation relating to nationality and, in particular, to cases in which it is forfeited".
[104] See http://www.un.org/cyberschoolbus/humanrights/resources/child.asp.
[105] J. Doek, "The CRC and the Right to Acquire and to Preserve a Nationality", *Refugee Survey Quarterly* (2006), 26.
[106] J. Doek, "The CRC and the Right to Acquire and to Preserve a Nationality", 28.
[107] See above. Human Rights Committee, General Comment 17.

countries, with which the child has a link by parentage, residence or place of birth.[108] Therefore, in light of Article 7 one could argue that it is unacceptable that a country of nationality of (a) parent(s) of an otherwise stateless child limits the transmission of its nationality e.g. in case of birth abroad, if statelessness would be the consequence.

It should be noted that Article 7 of the CRC interacts with the 1961 Convention and other UN and regional treaties which establish rules to prevent statelessness at birth and among children. Paragraph 2 of Article 7 specifically refers to these other instruments: *"The States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless"*. (emphasis added).

Article 7 therefore influences the obligations of States under Articles 1 and 4 of the 1961 Convention. That is in particular the case for States which opt for an application procedure for otherwise stateless children. It follows from Article 7(1) that a child may not be left stateless for an extended period of time. In that light it is unacceptable that a State would give an otherwise stateless child only the right to acquire its nationality at the age of eighteen, as allowed under Article 1(2)(a) of the 1961 Convention. Also residence requirements of considerable duration must be avoided. Furthermore, if it is accepted that CRC Article 7 obliges the State of a parent to provide for the acquisition of the nationality by descent in all cases where a child would otherwise be stateless, this would imply that Articles 1(4) and (5) and Article 4 would be superseded.

It is remarkable, that Article 8(1) forbids "unlawful interference" and Article 8(2) speaks of "illegally deprived". However, it is likely that each "unlawful interference" causing the loss of nationality by the child has to be classified as "illegal deprivation" under Article 8(2). Consequently, in such cases the loss of nationality should deemed not to have taken place or the State should provide for the recovery of nationality on application without any further condition. It is underscored that deprivation in the sense of Article 8(2) does not only mean deprivation through a specific act by the authorities, but also includes an *ex lege* loss as a consequence of another act that is classified as unlawful under Article 8(1).

e. Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)[109]

The Convention on the Rights of Persons with Disabilities includes rules on nationality in its Article 18. The Convention was opened for signature on 30 March 2007 and entered into force on 3 May 2008. In April 2013, 130 States were party to the Convention. Of the Contracting States to the 1961 Convention 32 States are also bound by this Convention.[110]

Article 18 reads:

> 1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:
>
> a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

[108] In the context of State succession, predecessor and successor States may also have obligations. Compare article 10 of the 2006 Convention on the avoidance of statelessness in relation to State succession.
[109] UNTS 2515, 3.
[110] See http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en.

> b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
>
> c) Are free to leave any country, including their own;
>
> d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.
>
> 2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

The Convention repeats mainly principles already enshrined in other international instruments. Its relevancy will likely appear to be that health requirements for naturalisation are problematic in light of Article 18(1)(a).

II. Regional Treaties

Parallel to the development of the corpus of international treaties, several regional bodies adopted regional instruments that also contain norms pertaining to the right to a nationality. Whilst only some of these regional treaties are relevant for the European context, for the sake of completion we will refer to all regional treaties having a bearing on this issue.

f. American Convention on Human Rights (San José, Costa Rica, 22 November 1969)[111]

The 1969 American Convention on Human Rights was the first regional instrument to reaffirm Article 15 of the UDHR's universal promise of the right to nationality. At the time of writing, 24 countries are bound by this Convention.[112]

Article 20 of the American Convention reads as follows:

> 1. Every person has the right to a nationality.
>
> 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
>
> 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

The text of Articles 20(1) and 20(3) mirrors the language of UDHR Article 15 with slight changes.[113] Article 20(2) of the American Convention, however, guarantees the acquisition of nationality of the country of birth (*iure soli*) if a person does not have the right to another nationality. It affirms the first alternative safeguard against statelessness provided in Article 1(1) of the 1961 Convention. This clear choice for a default *ius soli* rule can be explained by

[111] OAS Treaty Series No. 36, UNTS 1144, 123.
[112] Of the Parties to the 1961 Convention Bolivia, Brazil, Costa Rica, Ecuador, Guatemala, Honduras, Jamaica, Panama and Uruguay are also bound by this Convention. See http://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f10e1.
[113] The minor differences are that UDHR article 15 claims that "everyone" has right to nationality. Compare also Article 4 of the European Convention on Nationality.

the strong preference for *ius soli* for the acquisition of nationality at birth in the Americas.[114] The provision seems to allow the interpretation that a State is not obliged to grant its nationality to stateless persons born in the territory if they have the right to acquire another nationality, e.g. by declaration of their parent(s).

g. Berne Convention to Reduce the Number of Cases of Statelessness (Berne, 13 September 1973

Initiated by the *Commission Internationale de l'État Civil* (CIEC or International Commission on Civil Status), a Convention to Reduce the Number of Cases of Statelessness was concluded in Berne (Switzerland) in 1973. Article 1 of this Convention prescribes that States must grant citizenship *iure sanguinis a matre* in all cases where the child would be otherwise stateless. Of the Contracting States of the 1961 Convention only Germany is still bound by this treaty.[115] The Netherlands ratified this CIEC Convention in 1985, but denounced it in 2001 because it has limited added value as a result of the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women.

h. African Charter on the Rights and Welfare of the Child (Addis Ababa (Ethiopia) 1990)[116]

The African Charter on the Rights and Welfare of the Child enshrines the right to a nationality in its Article 6. The African Charter entered into force in 1999 and there are 43 States party to the Charter to date.[117] Of the Contracting States to the 1961 Convention Benin, Chad, Lesotho, Liberia, Libya, Niger, Nigeria and Rwanda are bound by the African Charter; Swaziland and Tunisia signed the Charter, but have not yet ratified it.

Article 6 on "Name and Nationality" reads as follows:

> 1. Every child shall have the right from his birth [t]o a name.
>
> 2. Every child shall be registered immediately after birth.
>
> 3. Every child has the right to acquire a nationality.
>
> 4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 6(4) gives preference to the first alternative of Article 1(1) of the 1961 Convention. Of particular note is that this Charter provision requires "constitutional recognition" of the principles for the granting of nationality by States where children are born who are otherwise stateless.

[114] L. van Waas, *Statelessness under international law*, 60-61.
[115] See http://www.ciec1.org/SignatRatifConv.pdf.
[116] OAU Doc. CAB/LEG/24.9/49 (1990).
[117] See http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf.

On 25 March 2011, the African Committee of Experts on the Rights and Welfare of the Child[118] concluded that Kenya violated the rights of ethnic Nubian children born in Kenya to non-discrimination, nationality and protection against statelessness as guaranteed under Articles 6(3) and (4).[119]

i. Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (Minsk, 26 May 1995)[120]

The 1995 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms guarantees in its Article 24:

> 1. Everyone shall have the right to citizenship.
> 2. No one shall be arbitrarily deprived of his citizenship or of the right to change it.

Remarkable is the use of the word "citizenship" instead of "nationality". The background of this is the fact that in the Russian language and in the Russian legal system a difference existed between "citizenship" which indicates the link between a person and the State and "nationality" which indicates the link between as person and an ethnicity.

j. European Convention on Nationality (Strasbourg, 6 November 1997)[121]

In Europe, the 1961 Convention had considerable influence on the provisions of the 1997 European Convention on Nationality (ECN). Several provisions of the European Convention on Nationality address the avoidance or reduction of cases of statelessness. To date, 20 countries are bound by this Convention. Of the Contracting States of the 1961 Convention, 14 States are also party to the European Convention.[122]

First of all, Articles 4(a)–(c) of the European Convention on Nationality repeat the message of Article 15 UDHR as follows:

> The rules on nationality of each State Party shall be based on the following principles:
> a. everyone has the right to a nationality;
> b. statelessness shall be avoided;
> c. no one shall be arbitrarily deprived of his or her nationality;

Article 6(1)(b) of the ECN prescribes the acquisition of nationality to "foundlings found in its territory who would otherwise be stateless".

---

[118] The African Committee of Experts on the Rights and Welfare of the Child monitors the implementation of the African Charter on the Rights and Welfare of the Child.The Committee can receive complaints against State parties and is based in Addis Ababa.
[119] See http://www.ihrda.org/2011/03/kenya-violates-african-children%e2%80%99s-charter-as-nubian-children-suffer-discrimination-and-statelessness/.
[120] See: http://www.unhcr.org/refworld/pdfid/49997ae32c.pdf.
[121] CETS 166.
[122] Albania, Austria, Bosnia-Herzegovina, Bulgaria, Denmark, Finland, Germany, Hungary, Moldova, Netherlands, Norway, Portugal, Romania and Sweden. See: http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=1&DF=07/02/2012&CL=ENG.

For its part, Article 6(2) of the ECN regulates the access to nationality for otherwise stateless children in general:

> 2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
>
> a. at birth *ex lege*; or
>
> b. subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

This provision has many similarities with the regime of the 1961 Convention, but there are some important differences. The 1961 Convention allows a State to postpone the real access to its nationality to the moment the stateless person involved reaches the age of 18 years, whereas according to the European Convention on Nationality the access has to be given after five years of lawful and habitual residence while a child is still a minor. The 1961 Convention also allows States to reject an application because of a sentence for a crime which constitutes a threat for the national security or because of a sentence to more than five years imprisonment. The European Convention does not allow this ground for a rejection of the application. As such, the obligations of the European Convention on Nationality are stricter than those under the 1961 Convention, reflecting developments in the prohibition of statelessness under international law.

However, the 1961 Convention guarantees that a person born stateless has – in principle – after attaining the age of majority at least one year to take a decision on the acquisition of the nationality of his country of birth.[123] Furthermore, the European Convention allows States to require a period of lawful and habitual residence, whereas the 1961 Convention only allows States to require habitual residence during the relevant period. The drafters of the 1961 Convention sought to guarantee a right to nationality and were concerned that by interpreting "habitual" residence as lawful residence, a State could avoid the obligations of the Convention by refusing a stateless person a residence permit – a situation which is sought explicitly to avoid through the strict formulation of the permissible requirement of "habitual" residence set forth in Articles 1(2), 1(4), and Article 4.

Article 6(4)(g) of the ECN requires the facilitation of the naturalization of stateless persons living on the territory. This obligation was not new, but a repetition of Article 32 of the 1954 Convention relating to the Status of Stateless Persons.[124] However, Article 6(3) of the European Convention also establishes that the State may not require a period of residence exceeding ten years before an application for naturalization may lodged. As a result, a key means of facilitating naturalization for stateless persons would be to require a shorter period of residence.

The ECN also includes rules on the loss of nationality and on procedural issues. Very important is the fact that articles 7 and 8 of the European Convention on Nationality provide for an exhaustive list of acceptable grounds for loss of nationality. Furthermore, Article 7(3) underpins that grounds of loss may not cause statelessness except in the case of Article 7(1)(b): "Acquisition of the nationality of the State Party by means of fraudulent conduct,

[123] See on this difference L. van Waas, *Statelessness under international law*, 61-62, in particular footnote 55.
[124] UNTS 360, 117.

false information or concealment of any relevant fact attributable to the applicant". This restriction considerably reduces cases of statelessness. The grounds mentioned in Article 7(4) and (5) 1961 Convention, which may cause statelessness, cannot do so under the European Convention on Nationality.

The following grounds for loss of nationality are acceptable under Article 7(1) ECN:

a voluntary acquisition of another nationality;

b acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;

c voluntary service in a foreign military force;

d conduct seriously prejudicial to the vital interests of the State Party;

e lack of a genuine link between the State Party and a national habitually residing abroad;

f where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;

g adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.

Article 7(2) allows States to provide "for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it". Article 7(3) underpins that a State "may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article". Moreover Article 8 ECN recognises to right to renounce a nationality, provided this does not cause statelessness.

Quite recently, the Council of Europe adopted additional rules which should contribute to an enhanced reduction of cases of statelessness. A Committee of Experts appointed by the Secretary General worked in 2008-2009 on a Recommendation on the Nationality of Children, which was adopted by the Committee of Ministers on 9 December 2009.[125] The Secretary General asked *inter alia* to pay special attention to statelessness issues.

Recommendation 2009/13 contains 23 principles. Eleven of these principles have as an overall goal the avoidance of statelessness. They give further guidance which rules could be adopted in order to fight statelessness more efficiently. However, even if all the rules of the recommendation would be implemented, statelessness among children would still not be eliminated completely.[126]

A striking difference between the Council of Europe Recommendation 2009/13 on the one hand and the 1961 Convention on the other has to do with the relationship between

[125] The complete text of Recommendation 2009/13 can be consulted at https://wcd.coe.int/ViewDoc.jsp?id=1563529&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383; the text of the Explanatory Memorandum is available at https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM(2009)163&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

[126] G.-R. de Groot, "Strengthening the Position of Children: Council of Europe's Recommendation 2009/13", Concepts of Nationality in a Globalised World (forthcoming).

Article 1 and Article 4 of the 1961 Convention. As further developed in the comparative analysis of this report (section 4), the *ius soli* inspired obligations of Article 1 of the 1961 Convention have precedence over the *ius sanguinis* inspired rules of Article 4. In Recommendation 2009/13 the opposite can be observed: the default *ius sanguinis* rule of principle 1 has precedence above the default *ius soli rule* of principle 2. This difference may be explained by the fact that within the Council of Europe the *ius sanguinis* tradition is stronger than that of *ius soli*.

Recommendation 2009/13 contains several principles with relevancy for grounds for loss of nationality. Principle 10 recommends providing the revocation or annulment of an adoption will not cause the loss of nationality acquired by this adoption, if statelessness would be the consequence. Principle 15 makes an additional step by recommending, that the nationality acquired by the adoption should not be lost in case of revocation or annulment, if the child is lawfully and habitually resident on the territory for a period of more than five years. Principle 18 deals with the nationality position of children who were treated in good faith as nationals. After a specific period of time to be fixed by domestic law, they should not be declared as not having acquired their nationality. Finally, principle 22 is relevant: States should provide that children who have lost their nationality have the right to apply for recovery of it before the age of majority, or within at least three years after reaching the age of majority.

k. Arab Charter on Human Rights (22 May 2004)[127]

In the Arab Charter on Human rights of 15 September 1994,[128] which never came in force, Article 24 enshrines the right to a nationality:

> No citizen shall be arbitrarily deprived of his original nationality, nor denied his right to acquire another nationality without legal basis.

This provision evidently paraphrased Article 15 Universal Declaration of Human Rights.

A new Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May 2004. The Charter came in force on 15 March 2008.[129] Article 29 deals with the right to a nationality:

> 1. Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.
>
> 2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.
>
> 3. Non one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.

[127] http://www1.umn.edu/humanrts/instree/loas2005.html?msource=UNWDEC19001&tr=y&auid=3337655.
[128] http://www1.umn.edu/humanrts/instree/arabcharter.html.
[129] http://www.icnl.org/research/monitor/las.html.

l. Covenant on the Rights of the Child in Islam (Sana'a, June 2005)[130]

Also the Covenant on the Rights of the Child in Islam adopted by the 32nd Islamic Conference of Foreign Ministers in Sana'a, Republic of Yemen, in June 2005 underscores the right of the child to a nationality, Article 7 provides:

> 1. A child shall, from birth, have right to a good name, to be registered by authorities concerned, to have his nationality determined and to know his/her parents, all his/her relatives and foster mother.
>
> 2. States Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.
>
> 3. The child of unknown descent or is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title and nationality.

This provision is clearly inspired by Articles 7 and 8 of the Convention on the Rights of the Child. Article 7(2) designates both the country of birth of the child and the country of nationality of a parent as the States responsible for granting nationality to reduce statelessness of children. Furthermore, the attention for the position of children whose position is legally assimilated to the status of children of unknown descent is important. The target group of Article 7(3) constitutes children whose parent(s) may be known, but who do not have a legally recognised link of parentage with a parent. They are indeed in the same vulnerable position as foundlings and are in need of protection against statelessness.

m. European Convention on the avoidance of statelessness in relation to State succession (Strasbourg, 19 May 2006).[131]

The European Convention on the avoidance of statelessness in relation to State succession has been ratified by 6 States at the time of writing. Of the Contracting States of the 1961, 5 are also bound by this Convention.[132] Article 10 is of importance as it establishes that:

> A State concerned shall grant its nationality at birth to a child born following State succession on its territory to a parent who, at the time of State succession, had the nationality of the predecessor State if that child would otherwise be stateless.

Article 8(1) on the rules of proof underscores, that "[a] successor State should not insist on its standard requirements of proof necessary for granting its nationality in the case of persons who have or would become stateless as a result of State succession and where it is not reasonable for such persons to meet the standard requirements". The lower standard of proof required in cases of State succession is an important tool for interpreting relevant evidentiary issues in other treaties dealing with the avoidance and reduction of statelessness.

n. ASEAN Declaration of Human Rights (Phnom Penh (Cambodia) 18 November 2012)[133]

[130] http://www.unhcr.org/refworld/docid/44eaf0e4a.html .
[131] CETS 200.
[132] See: http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=200&CM=1&DF=07/02/2012&CL=ENG.

The recently adopted ASEAN Declaration of Human Rights also expressly forbids the arbitrary deprivation of nationality in Article 18:

> Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality

2.5 The position of the UNHCR and the International Court of Justice

Articles 11 and 14 of the 1961 Convention address issues of oversight and implementation pertaining to the 1961 Convention. The two provisions read as follows:

> Article 11. The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.
>
> Article 14. Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

The draft of the International Law Commission proposed to establish an agency within the framework of the United Nations responsible for acting on behalf of stateless persons. The Commission draft further proposed that a tribunal be created which would be competent "to decide any dispute between them [i.e. the Contracting States] concerning the interpretation or application of this Convention and to decide complaints presented by the agency [….] on behalf of a person claiming to have been denied nationality in violation of the provisions of the Convention".

During the negotiation process on the Convention, however, it soon became evident that many States were against a special tribunal[134] and the establishment of such a tribunal was therefore rejected. But several States also had severe hesitations about creating an agency to act on behalf of stateless persons before governments.[135] At the end, a very careful compromise was formulated in Article 11: within the framework of the United Nations a "body" should be established, tasked with "the examination" of a claim under the Convention and "assistance in presenting [the claim] to the appropriate authority". The formulation of Article 11 indicates that "the body" involved does not decide on the claim, but also does not exclude that the "body" might submit an opinion on the claim or give its opinion on the interpretation of provisions of the Convention.[136] However, it is for the appropriate authorities in the Contracting State to make a final decision on a claim.[137]

133

http://www.thecambodiaherald.com/cambodia/detail/1?page=11&token=ODYwNjEzMDgzNTIzODcwMGIyNTNiZGRkZWM4ODM0

134 Summary Record of the 9th Meeting of Committee 1, A/CONF.9/C.1/SR.9 (7-4-1959), p. 5. See Summary Record of the 17th Meeting of Committee 1, A/CONF.9/C.1/SR.17 (13-41959), p. 2-9.

135 L. van Waas, *Statelessness under international law*, 46.

136 This happened in December 2010 in a procedure pending before the Netherlands *Raad van State* (Council of State, the Supreme Administrative Court of the Netherlands).

137 L. van Waas, *Statelessness under international law*, 47.

The establishment of the "body" involved happened by a resolution adopted on 10 December 1974 by the General Assembly of the United Nations.[138] The tasks mentioned in Article 11 were attributed to the United Nations High Commissioner for Refugees.[139] As a result of subsequent resolutions, the mandate responsibilities of the UNHCR regarding statelessness are not limited to issues related to the 1961 Convention. The mandate is universal: the UNHCR has a general task to enhance the prevention and reduction of statelessness and to protect stateless persons.[140]

Article 14 stipulates that a dispute between Contracting States related to the 1961 Convention which cannot be settled by other means, will be decided by the International Court of Justice on the request of the States. Until now, no such request from Contracting States has been submitted to the Court. International case law of the International Court of Justice on the 1961 Convention is therefore lacking. This is not surprising, given that a Contracting State would only have an interest or incentive in doing so where it would be obliged to grant its nationality under the Convention, because another Contracting State does not fulfil its own obligations and therefore results in statelessness.[141] It is not difficult to imagine that those categories of cases will be rare.

Of the Contracting States, only Niger and Tunisia have made reservations with respect to Articles 11 and 14. At the occasion of signature of the Convention, France also made such reservations but has not yet ratified the Convention.

Finally, it worth noting that in 1996 UNHCR was requested by the UN General Assembly to actively promote accession to the two Statelessness Conventions, and to serve in a technical and advisory role to states interested in implementing the Convention's provisions in their nationality laws.[142] UNHCR has provided support to this end ever since. In 2006 the Member States of UNHCR's Executive Committee (ExCom) presented a conclusion that urged UNHCR "to strengthen its efforts in this domain by pursuing targeted activities to support the *identification*, *prevention* and *reduction* of statelessness and to further the *protection* of stateless persons".[143] These four areas govern UNHCR's statelessness-related efforts today. It was also confirmed that, in addition to the promotion of accession, UNHCR should take on the duty of providing training, technical expertise and operational support to states which were struggling with issues related to statelessness.[144] Still, it should be noted that UNHCR does not challenge states' prerogative to govern the acquisition or loss of nationality. What the organization can do, for instance, is assist stateless individuals through the dissemination of information on citizenship, provide documentation and legal advice and promote birth registration. Detailed guidelines on how to determine whether or not a person is stateless have recently been published.[145] ExCom further encouraged UNHCR to "promote increased understanding of the nature and scope of the problem of statelessness, to identify

[138] UN Docs. A/Res/3274 (XXIX) 1974.
[139] See also the resolutions A/Res/31/36-1976; A/Res/49/169-1995; A/Res/50/152-1996; A/Res/61/137-2007.
[140] Res 50/152 and subsequent resolutions. See generally M. Manly, "UNHCR's Mandate and Activities to Address Statelessness in Europe", *European Journal of Migration and Law* 14, no. 3 (2012).
[141] For example, a Contracting State could try to avoid the grant of its nationality ex article 1(4) by arguing, that another Contracting State had the obligation to grant its nationality ex article 1(1), but did not implement that obligation.
[142] UN General Assembly resolution 50/152, 9 February 1996.
[143] UNHCR, "Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, No. 106 (LVII) - 2006".
[144] For an insight into the national practice in a number of European countries, see G. Gyulai, "Statelessness in the EU Framework for International Protection", *European Journal of Migration and Law* 14, no. 3 (2012).
[145] UNHCR, "Guidelines on Statelessness No. 2: Procedures fo Determining whether an Individual is a Stateless Person", (2012).

stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem".[146]

3. Comparative methodology: a typology of modes of protection against statelessness

A person can be protected against statelessness in two ways. He or she can acquire a nationality and he or she can be protected by not losing the nationality that is already held. Hence, in order to assess the extent to which States provide sufficient protection against statelessness we need to analyze both the rules on the acquisition of citizenship, as well as those on the loss of citizenship. However, citizenship laws often use different terms for similar rules. Comparing legal provisions on acquisition and loss of citizenship requires therefore a standardisation of terms and definitions. The typology of modes of protection against statelessness is an analytical grid that outlines, in a systematic way, categories of persons that are at risk of being or becoming stateless and outlines, with reference to the most important international standards, the obligation of States with regard to national law on the acquisition and loss of citizenship.

The typology of modes of protection against statelessness follows the logic of a more general typology on the 'modes of acquisition of citizenship'[147] and on 'modes of loss of citizenship',[148] as developed by the EUDO CITIZENSHIP Observatory. For each mode of protection against statelessness, the typology defines a precise target group of persons at risk of being stateless (see table below). By defining standardized target groups, the typology allows comparing rules applicable to similar at-risk groups across countries.

In addition, based on the comprehensive set of international standards outlined in the previous section, we define precise international norms which serve as the benchmark to assess for each mode whether states provide sufficient protection against statelessness. These norms are listed at the top of each 'overview by mode' in the online database (with hyperlinks to relevant provisions) and also at the beginning of each relevant part in Section 4 of this report. For example, for the protection against statelessness for children born in a country who would otherwise be stateless (mode S01) we define as relevant norms the 1961 Convention on the Reduction of Statelessness, Articles 1 and Article 3; the 1997 European Convention on Nationality, Article 6(2); and the 1989 Convention on the Rights of the Child, Article 7(1) in conjunction with Article 3(1). In Section 4 of this report, we start the comparative overview of each mode with an introduction and discussion of these relevant norms.

[146] UNHCR, "Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, No. 106 (LVII) - 2006".
[147] Vink, M., O. Vonk and I. Honohan (2013). EUDO CITIZENSHIP Database on Modes of Acquisition of Citizenship in Europe. San Domenico di Fiesole: Robert Schuman Centre for Advanced Studies, European University Institute, available at http://www.eudo-citizenship.eu/databases/modes-of-acquisition.
[148] Vink, M., O. Vonk and I. Honohan (2013). EUDO CITIZENSHIP Database on Modes of Loss of Citizenship in Europe. San Domenico di Fiesole: Robert Schuman Centre for Advanced Studies, European University Institute, available at http://www.eudo-citizenship.eu/databases/modes-of-loss.

Comparative typology: persons at risk of being or becoming stateless	
S01	Children born in a country who would otherwise be stateless
S02	Foundlings found in a country of unknown parentage
S03	Persons born to a citizen of a country (birth in that country)
S04	Persons born to a citizen of a country (birth abroad)
S05	Persons who are recognized refugees
S06	Stateless persons or persons with unclear citizenship who are not covered by any other mode of protection against statelessness
S07	Persons who voluntarily renounce the citizenship of their country
S08	Persons who reside outside the country of which they are a citizen
S09	Persons who render services to a foreign country
S10	Persons who render military service to a foreign country
S11	Persons who are disloyal to the country of which they are a citizen or whose conduct is seriously prejudicial to the vital interests of that country
S12	Persons who commit other (criminal) offences
S13	Persons who have acquired citizenship by fraud
S14	Persons whose descent from a citizen is annulled or who are adopted by a citizen of another country
S15	Persons who change their civil status due to marriage with a citizen of another country or dissolution of a marriage with a person holding the same citizenship
S16	Persons whose spouse or registered partner loses citizenship of a country
S17	Children whose parents lose citizenship of a country

To determine the relevant standards under international law, we refer both to norms from international instruments such as the two UN statelessness conventions and to norms from regional instruments. The database thus draws on a number of international conventions, including the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the 1979 Convention on the Elimination of all Forms of Discrimination against Women, and the 1989 Convention on the Rights of the Child. In Europe, specifically the European Convention on Nationality is relevant. The typology does not cover norms which, despite their strong normative value, do not impose a concrete obligation on States. For example, Article 15 of the Universal Declaration of Human Rights which provides that every person has the right to a citizenship is of tremendous importance, yet does not impose a concrete obligation on States. Hence, we do not include it as a relevant international norm for a specific mode of protection against statelessness.

Database: sources

The database covers regulations in force on 1 January 2013. In order to develop the 'Protection against statelessness database' for 36 European countries, we have primarily relied on three types of sources.

First, we make use of the already condensed information on national laws available in the EUDO CITIZENSHIP comparative databases on 'modes of acquisition of citizenship'[149] and on 'modes of loss of citizenship'.[150] Where appropriate we have rephrased the EUDO modes of acquisition and loss to focus specifically on protection against statelessness. For example, EUDO CITIZENSHIP mode of loss of citizenship L02 deals with loss of citizenship due to permanent residence abroad; the corresponding target group that is at risk of becoming stateless therefore consists of persons who reside outside the country of which they are a citizen (see mode of protection against statelessness S08).

Second, in order to precisely check the relevant legal provisions, we have closely consulted the Nationality Acts of all 36 States included in the Database. We do so as much as possible in the original languages (Dutch, English, French, German, Portuguese and Spanish), but where necessary we use the translations which are available on the EUDO Citizenship website. Both in the database (with hyperlinks to the relevant national legislation), as well as in the comparative overviews in the remainder of this report, we report the precise relevant national legal provisions for each mode of protection against statelessness. This allows users of the database and readers of this report to validate our assessment independently.

Thirdly, in addition to the wider literature on statelessness, we use three recent comparative studies on citizenship law, which are particularly relevant for the assessment of protection against statelessness:

- G.R. de Groot (2011). Background Paper Preventing Statelessness among Children: Interpreting Articles 1-4 of the 1961 Convention on the Reduction of Statelessness and Relevant International Human Rights Norms. Geneva: UNHCR.
- Vink, M. and G.R. de Groot (2010). Birthright Citizenship: Trends and Regulations in Europe. Comparative Report, RSCAS/EUDO-CIT-Comp. 2010/8. EUDO Citizenship Observatory, pp. 35.
- De Groot, G.R. and M. Vink (2010). Loss of Citizenship: Trends and Regulations in Europe. Comparative Report, RSCAS/EUDO-CIT-Comp. 2010/4. EUDO Citizenship Observatory, pp. 52.

4. Comparative analysis of protection against statelessness in Europe

In this section we present our key findings on the extent to which States in Europe provide sufficient protection against statelessness. The presentation follows the logic of the comparative typology and discusses modes S01 to S17 in numerical order. In each section, we start with a discussion of the relevant international norms, then present the key comparative differences and subsequently highlight some particularly remarkable trends.

[149] See in particular modes of acquisition of citizenship: A01, A03b, A03a, A22, A23.
[150] See in particular modes of loss of citizenship: L01, L02, L03, L04, L07, L08, L09, L11, L12 and L13.

Before going to the comparative analysis, one important caveat is in order. This concerns the main instruments which serve as *tertium comparationis*.[151] Although section 2 (*supra*) explored in a comprehensive way the international treaties dealing with statelessness, the descriptive and normative assessment of our findings would have become too complicated had we chosen to refer to all relevant norms in the ensuing analysis. We therefore use the 1961 Convention and the European Convention on Nationality as the primary benchmarks to assess the national rules on protection against statelessness. Where relevant we will additionally refer to instruments such as the 1954 Convention, the Convention on the Rights of the Child and Council of Europe Recommendation 2009/13.

The descriptive analysis of the protection-regime in the 36 countries under discussion is accompanied by tables containing the relevant legal rules in those countries. Moreover, the analysis includes frequent references to recently issued UNHCR guidelines on the interpretation of the two UN Statelessness Conventions.[152]

4.1 Children born in a country who would otherwise be stateless

Focus: Does the country have a safeguard in line with international standards that provides for the grant of citizenship to otherwise stateless children?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Articles 1* and *Article 3*;

1997 European Convention on Nationality, Article 6(2);

1989 Convention on the Rights of the Child, *Article 7(1)* in conjunction with *Article 3(1)*

The best solution to the problem of statelessness is evidently to secure for everyone the acquisition of a nationality at birth. For this reason several international instruments impose explicit obligations upon States to grant citizenship to children born on their territory who would otherwise be stateless. Although our focus will mainly be aimed at the 1961 Convention (CRS 1) and the European Convention (ECN 6(2)), the UNHCR Guideline on the interpretation of Articles 1-4 of the 1961 Convention on the Reduction of Statelessness[153] (hereafter: the Guideline) also states that the 1989 Convention on the Rights of the Child (CRC) is of paramount importance in determining the scope of the 1961 Convention's obligations to prevent statelessness among children. The Guideline continues in the following way:

[151] On the concept of *tertium comparationis*, see G.-R. de Groot and M.P. Vink, "Loss of Citizenship: Trends and Regulations in Europe", 3ff.

[152] These are UNHCR, "Guidelines on Statelessness No. 1"; UNHCR, "Guidelines on Statelessness No. 2"; UNHCR, "Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level", (2012); UNHCR, "Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness", (2012).

[153] UNHCR, "Guidelines on Statelessness No. 4". We note that similar guidelines have not yet been published on Articles 5-9 of the 1961 Convention. The analysis of Modes S07-S17, dealing with statelessness that results from loss of nationality, does however incorporate excerpts from G.-R. de Groot, "Background Paper on Avoiding Statelessness caused by Loss or Deprivation of Nationality: Interpreting Articles 5-9 of the 1961 Convention on the Reduction of Statelessness and Relevant International Human Rights Norms", (Geneva: UNHCR, forthcoming). To improve readability of this report, original footnotes from Guideline no. 4 or De Groot's background paper have in most cases been deleted.

> Several provisions of the CRC are important tools for interpreting Articles 1-4 of the 1961 Convention. Article 7 of the CRC sets out that every child has the right to acquire a nationality. The drafters of the CRC saw a clear link between this right and the 1961 Convention and therefore specified in Article 7(2) of the CRC that "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless." Article 8 of the CRC provides that every child has the right to preserve his or her identity, including nationality. Article 2 of the CRC is a general non-discrimination clause which applies to all substantive rights enshrined in the CRC, including Articles 7 and 8. It explicitly provides for protection against discrimination on the basis of the status of the child's parents or guardians. Article 3 of the CRC sets out a general principle and also applies in conjunction with Articles 7 and 8, requiring that all actions concerning children, including in the area of nationality, must be undertaken with the *best interests of the child* as a primary consideration.
>
> It follows from Articles 3 and 7 of the CRC that a child must not be left stateless for an extended period of time: a child must acquire a nationality at birth or as soon as possible after birth. The obligations imposed on States by the CRC are not only directed to the State of birth of a child, but to all countries with which a child has a relevant link, such as through parentage or residence. In the context of State succession, predecessor and successor States may also have obligations. [154]

Contracting States to the 1961 Convention have committed themselves to granting their citizenship to children born in their territory who would otherwise be stateless, either (a) at birth, by operation of law, or (b) upon an application being lodged. State parties may make the grant in accordance with sub-paragraph (b) subject to one or more of the following conditions (CRS 1): (1) the application is lodged during a period beginning not later than at the age of 18 and ending not earlier than at the age of 21; (2) the child has habitually resided in the territory of the country, not exceeding 5 years immediately preceding the lodging of the application or 10 years in total; (3) has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of 5 years or more on a criminal charge; and (4) has always been stateless.[155]

Article 1 of the 1961 Convention thus provides Contracting States with several alternative means for granting nationality to otherwise stateless children born in their territory. As can further be read in the Guideline,

> a Contracting State may [also] apply a combination of these alternatives for acquisition of its nationality by providing different modes of acquisition based on the level of attachment of an individual to that State. For example, a Contracting State might provide for automatic acquisition of its nationality by children born in their territory who would otherwise be stateless whose parents are permanent or legal residents in the State, whereas it might require an application procedure for those whose parents are not legal residents. Any distinction in treatment of different groups, however, must serve a legitimate purpose, cannot be based on discriminatory grounds and must be reasonable and proportionate.[156]

[154] Par. 10-11 of the Guideline.
[155] As par. 37 of the Guideline states, "the exhaustive nature of the list of possible requirements means that States cannot establish conditions for the grant of nationality additional to those stipulated in the Convention. As a result, it is not consistent with Article 1(2) to require that the parents of the individual concerned possess a specific type of residence in the State. Similarly, providing for a discretionary naturalization procedure for children who would otherwise be stateless is not permissible under the 1961 Convention. A State may nevertheless choose not to apply any of the permitted conditions and simply grant nationality upon submission of an application".
[156] Par. 33 of the Guideline.

The Guideline additionally provides that the rules for preventing statelessness among children contained in Articles 1(1) and 1(2) of the 1961 Convention must be read in light of later human rights treaties, which recognize every child's right to acquire a nationality, in particular where they would otherwise be stateless:

> The rules for preventing statelessness contained in Articles 1(1) and 1(2) of the 1961 Convention must be read in light of later human rights treaties, which recognize every child's right to acquire a nationality. Specifically, when read with Article 1 of the 1961 Convention, the right of every child to acquire a nationality (Article 7 of the CRC) and the principle of the best interests of the child (Article 3 of the CRC) require that States grant nationality to children born in their territory who would otherwise be stateless either (i) automatically at birth or (ii) upon application shortly after birth. Thus, if the State imposes conditions for an application as allowed for under Article 1(2) of the 1961 Convention, this must not have the effect of leaving the child stateless for a considerable period of time.[157]

The second relevant instrument, the 1997 European Convention, imposes on Contracting States an obligation to provide for its citizenship to be acquired by minor children who are born on their territory and who do not acquire at birth another citizenship. Such citizenship shall be granted either at birth by operation of law, or subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

The difference between the two Conventions is immediately apparent: under the European Convention a citizenship application may be subject to the requirement of lawful and habitual residence, while this is only habitual residence under the 1961 Convention. We therefore claim that the requirement of lawful residence violates the latter Convention. Moreover, we submit that a state which is a party to both the 1961 Convention and the European Convention remains bound by the stricter rule as laid down in the former.[158] For the Dutch context, for example, this means that where the child uses the option right under NET 6(1)(b), Article 94 of the Dutch Constitution requires that the requirement of lawful residence be set aside for violation of the 1961 Convention.[159] This interpretation of habitual residence is also confirmed in the Guideline:

> States may stipulate that an individual who would otherwise be stateless born in its territory fulfils a period of "habitual residence" in the territory of the State of birth in order to acquire that State's nationality. This period is not to exceed five years immediately preceding an application nor ten years in all. In light of the standards established under the CRC, these periods are lengthy. States which apply an

[157] Par. 34 of the Guideline.

[158] G.-R. de Groot, "Weer verder op weg naar een vernieuwd Nederlands nationaliteitsrecht", *Migrantenrecht* 9, no. 10 (1994), 214; G.-R. de Groot, "Staatloze kinderen: internationale standaards over hun recht op een nationaliteit", in *Het kind in het immigratierecht*, ed. G.G. Lodder and P.R. Rodrigues (Den Haag: Sdu uitgevers, 2012), 123.

[159] G.-R. de Groot, "A clarification of the fundamental rights implications of stateless and persons erased from the register of residents", Briefing paper European Parliament (2007), 8. See also A. Busser and P.R. Rodrigues, "Staatloze Roma in Nederland", *Asiel- en Migrantenrecht*, no. 8 (2010), 389. Moreover, the Statelessness Unit at UNHCR took this position in email message to the Dutch ministry of 21 December 2007: "In our view, 'habitual residence' is determined solely by factual criteria and does not depend upon whether an individual is lawfully or unlawfully resident within the territory of the Contracting State to the 1961 Convention'. (On file with the authors.)

> application procedure and require a certain period of habitual residence are encouraged to provide for a period as short as possible.
>
> The term "habitual residence" is found in a number of international instruments and is to be understood as stable, factual residence. It does not imply a legal or formal residence requirement. The 1961 Convention does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon *lawful* residence.
>
> It follows from the factual character of "habitual residence" that in cases where it is difficult to determine whether an individual is habitually resident in one or another State, for example due to a nomadic way of life, such persons are to be considered as habitual residents in both States.
>
> States may establish objective criteria for individuals to prove habitual residence. Lists of types of permissible evidence, however, are never to be exhaustive.[160]

While Austria, Denmark, Germany, Iceland, Latvia, the Netherlands and Switzerland require the child to be lawfully resident, Sweden asks the child to have permanent residence. This would not, however, violate the 1961 Convention if this refers to permanent *habitual* residence – although the mention of permanent residence *permit* seems to indicate that lawful residence is also required in Sweden.

Several other countries have problematic provisions as well where residence is concerned. This is because they focus on the residence status of the parents, while this status is irrelevant when it comes to granting citizenship to children born on the territory of a State who would otherwise be stateless.[161] Hungary and Lithuania, which require both parents to be resident in the country, and Estonia and Latvia, where at least five years of residence is required of the parents, therefore violate the 1961 Convention. The same is true for the Czech Republic, which requires at least one parent to have permanent residence.

It is equally problematic that certain countries impose additional conditions by requiring the parents to be stateless or of unknown citizenship (Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Macedonia and Slovenia). Again, the parents' citizenship status should be immaterial; it is only relevant whether the child would be "otherwise stateless".

The 1961 Convention also provides that the deadline for the application to be lodged cannot end before the age of 21. National rules that are not in tune with the Convention are those of Austria, Iceland and Sweden, which by only granting protection up to the age of 20 leave persons between the age of 20-21 without protection. Latvia unlawfully imposes language and integration requirements if the child is 15 years or older.

---

[160] Par. 40-43 of the Guideline.

[161] See par. 18 of the Guideline: "The term "would otherwise be stateless," means that the child would be stateless unless a Contracting State with which he or she has a link through birth in the territory or birth to a national of that State grants that child its nationality. To determine whether a child would otherwise be stateless requires determining whether the child has acquired the nationality of another State, either from his or her parents (*jus sanguinis* principle) or from the State on whose territory he or she was born (*jus soli* principle). Children are always stateless when their parents are stateless and if they are born in a country which does not grant nationality on the basis of birth in the territory. Yet, children can also be stateless if born in a State which does not apply the *jus soli* principle and if one or both parents possess a nationality but neither can confer it upon their children. The test is whether *a child* is stateless because he or she acquires neither the nationality of his or her parents nor that of the State of his or her birth; it is not an inquiry into whether a child's parents are stateless. Restricting the application of Article 1 of the 1961 Convention to children of stateless parents is insufficient in light of the different ways in which a child may be rendered stateless and contrary to the terms of those provisions".

Table 1. Acquisition of citizenship by children born in a country who would otherwise be stateless

country	*articles*	*procedure*	*conditions*
Austria	8(2);	Automatic;	For child born in wedlock, father or mother must also have been born in the country. For child born out of wedlock, the mother must also have been born in the country;
	14	Naturalisation (entitlement)	For stateless person born in Austria: must be under 20 years of age, stateless since birth, lawfully and habitually resident in Austria for five years and at least ten years in total, and not convicted for a crime which carries a prison sentence of 5 years or more (or for a number of specific crimes relating to national security and public order).
Belgium	10	Automatic	Child is not entitled to citizenship of another country.
Bulgaria	10	Automatic	Child does not acquire citizenship of another country by descent.
Croatia	7	Automatic	Parents must be of unknown citizenship.
Cyprus	No prov.	n.a.	n.a.
Czech Republic	3(b)	Automatic	Parents must be stateless and at least one of them must have permanent residence in the country.
Denmark	6	Naturalisation (discretionary)	Child must reside lawfully in the country. Additional conditions for persons between the age of 18-21: he/she must have resided in the country for 5 years immediately preceding the application (or 8 years in total), not been sentenced for any offence carrying a sentence of five years or more, and not been convicted for offences against national security.
Estonia	13(4)-(6)	Declaration	Child must be born and permanently resident in Estonia after 26 February 1992 (or before August 20, 1991 as citizen of the USSR) and "not deemed by any State to be citizens of that State on the basis of any Act in force". Until the age of 15, an application for citizenship can only be made by the child's parents (or single or adoptive parent) who must have been legally resident in Estonia for 5 years and are "not deemed by any State to be citizens of that State on the basis of any Act in force" (including citizens of the USSR before August 20, 1991).
Germany	2 AG-StlMindÜk 1977	Naturalisation (entitlement)	Child must be under 21 years of age, stateless since birth, lawfully and habitually resident in the country for five years, and not convicted for a crime which carries a prison sentence of 5 years or more.
Greece	1(2)	Automatic	Child must be of unknown citizenship or must not acquire another citizenship at birth.
Finland	9(1)(4), 9(2), 12(2)	Automatic	Child must not be entitled to citizenship of another country, or parents must be of unknown citizenship and the child is not entitled to the citizenship of another country. Or the child is born in Finland to parents who have refugee status (or similar status) there and the child does not acquire citizenship of either parent except through registration of his/her birth with the state of citizenship of the parents or through another procedure requiring the assistance of the authorities of that country. Additional requirement in case only one parent has refugee status in Finland: the child does not acquire citizenship of the other parent by birth, nor has a secondary right through birth to

			acquire it.
France	19(1)	Automatic	Child is born to stateless parents or to foreign parents and is not entitled to citizenship of another country.
Hungary	3(3)(a)	Automatic	Child must be born to stateless parents resident in the country.
Iceland	10; 3	Declaration; Declaration	Child must be under the age of 18 and lawfully resident in the country for 3 years since birth; Child (or adult between the age of 18-20) must have resided continuously in the country since the age of 13 years (irrespective of place of birth).
Ireland	6(3)	Automatic	Child must not be entitled to citizenship of another country.
Italy	1(1)(b)	Automatic	Parents must be unknown or stateless, or child must not be entitled to citizenship of another country.
Latvia	3.1	Declaration	Child must be born and lawfully resident in the country after August 21, 1991 and be stateless (or hold comparable status: "non-citizen") since birth. Until the age of 15, declaration of citizenship can only be made by a legal representative who is also stateless and resident in the country for 5 years. From the age of 15, the child can make a declaration of citizenship, providing he or she has received a secondary education in the country and is proficient in the language of the country. Child must not have a prison sentence of more than 5 years.
Lithuania	15	Automatic	Person is born, in the country or abroad, to stateless parents legally residing in the country.
Luxembourg	1(3), 1(4)	Automatic	Parents must be stateless or incapable of transferring their citizenship to the child.
Macedonia	6(1)	Automatic	Parents must be of unknown citizenship or stateless.
Malta	No prov.	n.a.	n.a.
Moldova	11(1)(b), 11(1)(c)	Automatic	Parents must be stateless or child must be born to a foreigner and unable to acquire the citizenship of another country.
Montenegro	7	Automatic	Parents must be of unknown citizenship or stateless or child must be unable to acquire the citizenship of another country.
Netherlands	6(1)(b)	Declaration	Child (or adult) must be stateless since birth and lawfully resident in the country for 3 years.
Norway	No prov.	n.a.	n.a.
Poland	14(2)	Automatic	Parents must be foreigners and the child must be unable to acquire the citizenship of any other country.
Portugal	1(1)(f)	Automatic	Child must not be entitled to citizenship of another country.
Romania	No prov.	n.a.	n.a.
Serbia	13	Automatic	Parents must be of unknown citizenship or stateless or the child must be stateless.
Slovakia	5(1)(b), 5(1)(c)	Automatic	Parents must be stateless or child must be unable to acquire the citizenship of any other country.
Slovenia	9	Automatic	Parents must be of unknown citizenship or stateless.
Spain	17(1)(c)	Automatic	Parent must be stateless or child must not be able to acquire the citizenship of any other country.
Sweden	6;	Declaration;	Child is stateless since birth and resident in the country with a permanent residence permit (for children below the age of five years); Child is stateless, holds a permanent residence permit and has

	7; 8	Declaration; Declaration	been residing in the country for three years (for children between 5-18 and irrespective of place of birth); Person is stateless, holds a permanent residence permit and is resident in the country since the age of 15 years (for persons between 18-20 and irrespective of place of birth).
Switzerland	26, 30 BüG	Naturalisation (discretionary)	Child must be under the age of 18 and resident in the country for at least five years of which one year immediately before lodging the application. Child must be integrated in the country, respect the legal order, and pose no threat to the security of the country.
Turkey	8(1)	Automatic	Parents must be foreign nationals and child must not be able to acquire the citizenship of another country.
United Kingdom	Schedule 2(3)(1)	Registration	Child must be under 22 years of age, stateless since birth, resident in the country for 5 years and not absent from the country for a total of more than 450 days.

It should also be noted that Denmark imposes additional conditions on stateless persons who are between the age of 18 and 21, such as the absence of a criminal record. These conditions can, however, be in tune with the 1961 Convention in case of very serious crimes as mentioned in Art. 1(2)(c), as is evident from the following paragraphs in the Guidelines:

> Pursuant to international human rights obligations, Contracting States that opt to grant nationality upon application pursuant to Article 1(1)(b) of the 1961 Convention, are to accept such applications from children who would otherwise be stateless born in their territory as soon as possible after their birth and during childhood.
>
> Where Contracting States set deadlines to receive applications at a later time from individuals born in their territory who would otherwise be stateless, they need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21 in accordance with Article 1(2)(a) of the 1961 Convention. This provision ensures that these individuals have a window of at least three years after majority within which to lodge their applications.[162]
>
> As set out in Article 1(2)(c), the permissible condition that an individual who would otherwise be stateless has been neither convicted of an offence against national security nor sentenced to a term of imprisonment for five years or more on a criminal charge refers to the criminal history of the individual and not to acts by his or her parents.
>
> Criminal consequences due to irregular presence on the territory of a State are never to be used to disqualify an individual who would otherwise be stateless from acquiring nationality under Article 1(2)(c).
>
> Whether a crime can be qualified as an "offence against national security" needs to be judged against international standards and not solely on the basis of a characterization by the concerned State. Similarly, criminalization of specific acts must be consistent with rights guaranteed by international human rights law (for example, freedom of expression, assembly and religion) and acts protected by such rights may not be considered "crimes" for the purposes of Article 1(2)(c). Sentencing standards must also be consistent with international human rights law.[163]

Another requirement that can be found, e.g. in Germany, is that the child must have been statelessness since birth. This is again acceptable under the 1961 Convention, witness the following observations from the Guideline:

[162] Par. 38-39 of the Guideline.
[163] Par. 44-46 of the Guideline.

> The final permissible condition in Article 1(2) of the 1961 Convention for granting citizenship through an application procedure allows States to require that an applicant has "always been stateless" (i.e. since birth). If a State does not explicitly require that a person has always been stateless, then a person born in their territory has the right to acquire that State's nationality if, for example, he or she was born stateless, acquired a nationality but lost this nationality and is stateless at the time of the application.
>
> Where a Contracting State requires that an individual has "always been stateless" to acquire nationality pursuant to an application under Article 1(2)(d), there is a presumption that the applicant has always been stateless and the burden rests with the State to prove the contrary. An applicant's possession of evidently false or fraudulently obtained documents of another State does not negate the presumption that an individual has always been stateless.[164]

Remarkable is that the nationality of Belgium, Finland and France is not acquired *iure soli* by otherwise stateless children who are entitled to acquire the nationality of a parent. The Guidelines conclude that this condition does not violate the obligations of the 1961 Convention:

> *Possibility to acquire the nationality of a parent by registration*
>
> Responsibility to grant nationality to children who would otherwise be stateless is not engaged where a child is born in a State's territory and is stateless, but could acquire a nationality by registration with the State of nationality of a parent, or a similar procedure such as declaration or exercise of a right of option.
>
> It is acceptable for Contracting States not to grant nationality to children in these circumstances only if the child concerned can acquire the nationality of a parent immediately after birth and the State of nationality of the parent does not have any discretion to refuse the grant of nationality. States that do not grant nationality in such circumstances are recommended to assist parents in initiating the relevant procedure with the authorities of their State or States of nationality.
>
> Moreover, the State is to grant nationality if a child's parents are unable or have good reasons for not registering their child with the State of their own nationality. This needs to be determined depending on whether an individual could reasonably be expected to take action to acquire the nationality in the circumstances of their particular case.[165]

4.2 Foundlings of unknown parentage found in a country

Focus: Does the country have a safeguard that provides for the grant of citizenship to foundlings of unknown parentage found in the territory of the country?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 2*;

1997 European Convention on Nationality, Article 6(1)b

As regards the position of children found in a country of unknown parentage, both the 1961 Convention (CRS 2) and the European Convention on Nationality (ECN 6(1)b) provide that these children shall, in the absence of proof to the contrary, be considered to have been born within that territory to parents possessing the citizenship of that country. The Guideline provides the following clarification:

[164] Par. 47-48 of the Guideline.
[165] Par. 24-26 of the Guideline.

Article 2 of the 1961 Convention establishes that children found abandoned in the territory of a Contracting State (foundlings) acquire the nationality of that State. The Convention does not define an age at which a child may be considered a foundling. The words for "foundling" used in each of the five authentic texts of the Convention (English, French, Spanish, Russian and Chinese) reveal some differences in the ordinary meaning of these terms, in particular with regard to the age of the children covered by this provision. State practice reveals a broad range of ages within which this provision is applied. Several Contracting States limit grant of nationality to foundlings who are very young (12 months or younger) while most Contracting States apply their rules in favour of children up to an older age, including in some cases up to the age of majority.

At a minimum, the safeguard for Contracting States to grant nationality to foundlings is to apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth. This flows from the object and purpose of the 1961 Convention and also from the right of every child to acquire a nationality. A contrary interpretation would leave some children stateless.

If a State provides for an age limit for foundlings to acquire nationality, the age of the child at the date the child was found is decisive and not the date when the child came to the attention of the authorities.

Nationality acquired by foundlings pursuant to Article 2 of the 1961 Convention may only be lost if it is proven that the child concerned possesses another State's nationality.

A child born in the territory of a Contracting State without having a parent, who is legally recognised as such (e.g. because the child is born out of wedlock and the woman who gave birth to the child is legally not recognized as the mother), is also to be treated as a foundling and immediately to acquire the nationality of the State of birth.[166]

Table 2. Acquisition of citizenship by foundlings of unknown parentage found in a country

country	*articles*	*procedure*	*conditions*
Austria	8(1)	Automatic	Child must be younger than 6 months.
Belgium	10	Automatic	No other conditions.
Bulgaria	11	Automatic	No other conditions.
Croatia	7	Automatic	No other conditions.
Cyprus	no prov.	n.a.	n.a.
Czech Rep.	5	Automatic	No other conditions.
Denmark	1(2)	Automatic	No other conditions.
Estonia	5(2)	Automatic	No other conditions.
Finland	12(1)	Automatic	No other conditions.
France	19	Automatic	No other conditions.
Germany	4(2)	Automatic	No other conditions.
Greece	1(2)	Automatic	Child is born in the country with unknown citizenship or does not acquire another citizenship at birth.
Hungary	3(3)(b)	Automatic	No other conditions.
Iceland	1(3)	Automatic	No other conditions.
Ireland	10	Automatic	Child must be a newborn infant.
Italy	1(2)	Automatic	No other conditions.

[166] Par. 57-61of the Guideline.

Latvia	2(3), 2(4)	Automatic	Child is found in the country of unknown parentage or lives in an orphanage in the country and has no parents.
Lithuania	16	Automatic	No other conditions.
Luxembourg	1(2)	Automatic	No other conditions.
Macedonia	6(1)	Automatic	No other conditions.
Malta	17(3)	Automatic	Child must be a newborn infant.
Moldova	11(2)	Automatic	No other conditions.
Montenegro	7	Automatic	No other conditions.
Netherlands	3(2)	Automatic	No other conditions.
Norway	4(2)	Automatic	No other conditions.
Poland	15	Automatic	No other conditions.
Portugal	1(2)	Automatic	Child must be a newborn infant.
Romania	5(3)	Automatic	No other conditions.
Serbia	13	Automatic	No other conditions.
Slovakia	5(2)(b)	Automatic	No other conditions.
Slovenia	9	Automatic	No other conditions.
Spain	17(1)(d)	Automatic	No other conditions.
Sweden	2	Automatic	No other conditions.
Switzerland	6	Automatic	No other conditions.
Turkey	8(2)	Automatic	No other conditions.
United Kingdom	1(2)	Automatic	Child must be a newborn infant.

The analysis shows that Cyprus is the only country that does not provide for any protection against statelessness for children found in Cyprus of unknown parentage. Greece does provide for protection, but requires that the child was also born in Greece, while Austria, Ireland, Malta, Portugal and the UK only grant protection if the child is a newborn infant. We therefore conclude that all these countries violate the relevant international norms.

The 1961 Convention does not expressly regulate situations where evidence is furnished regarding the parents or the place of birth of the foundling. However, it follows from Article 5(1) of the 1961 Convention that the discovery of foreign parentage does not entail that the nationality acquired *iure soli* as a foundling is lost if statelessness would be the consequence. The same conclusion should be drawn in cases where it is discovered that the child was born abroad. The aim of Article 2 was to give a foundling a better position than a stateless child born on the territory of a State by applying a presumption of nationality which in most cases will be correct. The nationality acquired pursuant to Article 2 should therefore only be lost if the discovery implies that the child possesses another nationality *iure sanguinis* or *iure soli*. This interpretation was also given during the preparatory negotiations: "[…], the child would possess the nationality of the country in which he had been found until shown to be entitled to another nationality".[167]

[167] Summary Record of the 5th Meeting of Committee 1, A/CONF.9/C.1/SR.5 (3-4-1959), p. 10.

4.3 Persons born to a citizen of a country (birth in that country)

Focus: Does the country permit parents to confer their citizenship to their children who are born in the territory of the country?

Relevant international standards:

1997 European Convention on Nationality, Article 6(1)a;

Recommendation 2009/13 on the Nationality of Children, Recommendation 1;

1950 European Convention on Human Rights, *Article 8* and *Article14* (cf. ECtHR judgment in *Genovese v. Malta*)

While the 1961 Convention does not contain a general provision on children born in a country to a citizen of that country,[168] the European Convention (ECN 6(1)a) states that, subject to any exceptions to children born abroad (see S04 *infra*), the country shall provide for its citizenship to be acquired by operation of law by children one of whose parents is a citizen at the time of the child's birth. A country may, however, require a special procedure for children born out of wedlock. Moreover, the first recommendation of Recommendation 2009/13 reads that countries should provide for the acquisition of citizenship *iure sanguinis* by children without any restriction which would result in statelessness. Finally, it is important to point at the judgment of the European Court of Human Rights in *Genovese v. Malta* (2011), from which it follows that discrimination in respect of the acquisition of nationality violates Article 8 in conjunction with Article 14 ECHR.[169]

The analysis of protection against statelessness for this target group is also a good occasion to refer to what the Guideline says about the impact of gender equality norms on provisions of the 1961 Convention:

> The principle of gender equality enshrined in the ICCPR and CEDAW must be taken into account when interpreting the 1961 Convention. In particular, Article 9(2) of the CEDAW provides that women shall enjoy equal rights with men with respect to conferral of nationality on their children.
>
> At the time of adoption of the 1961 Convention, prior to the adoption of the ICCPR (1966) and CEDAW (1979), many nationality laws discriminated on the basis of gender. The 1961 Convention acknowledges that statelessness can arise from conflicts of laws in cases of children born to parents of mixed nationalities, whether in or out of wedlock, on account of provisions in nationality laws that limit the right of women to transmit nationality. Article 1(3) of the 1961 Convention therefore establishes a safeguard requiring States to grant nationality to children who would otherwise be stateless and are born in their territory to mothers who are nationals. These children must acquire the nationality of their State of birth by operation of law immediately at birth.
>
> Today, almost all Contracting States to the 1961 Convention have introduced gender equality in their nationality laws as prescribed by the ICCPR and CEDAW. The safeguard contained in Article 1(3) of the 1961 Convention, however, remains relevant in States where women are still treated less favourably than men in their ability to transmit nationality to their children. Although Article 1(3) of the 1961

[168] The only reference in the 1961 Convention to the acquisition of citizenship by otherwise stateless children born in the territory of a country of which the *mother* is a national is Article 1(3). See in more detail G.-R. de Groot, *Background Paper Preventing Statelessness among Children: Interpreting Articles 1-4 of the 1961 Convention on the Reduction of Statelessness and Relevant International Human Rights Norms* (Geneva: UNHCR, 2012).

[169] *Genovese v. Malta*, Application nr. 53124/09.
Available at http://eudo-citizenship.eu/caselawDB/docs/ECHR%20Genovese%20v%20Malta.pdf.

Convention only addresses conferral of nationality by mothers, in light of the principle of equality set out in the ICCPR and CEDAW as well as other human rights treaties, children born in the territory of a Contracting State to fathers who are nationals are also to immediately acquire the nationality of that State at birth by operation of law, if otherwise they would be stateless.[170]

Table 3. Acquisition of citizenship by persons born to a citizen of a country (birth in that country)

country	*articles*	*procedure*	*conditions*
Austria	7, 7a	Automatic	No other conditions unless person -who is a minor- is born out of wedlock and the parents marry while the father is citizen at the time of marriage. Consent is needed by the person and her/his legal agent if the person is 14 years or older.
Belgium	8(1)(1)	Automatic	No other conditions.
Bulgaria	8, 9	Automatic	No other conditions.
Croatia	4(1)	Automatic	No other conditions.
Cyprus	109(1);	Automatic;	No other conditions (but: person must be born on or after 16 August 1960 in Cyprus to a citizen or to parents entitled to citizenship (in case of death));
	114	Registration (entitlement)	Person's descent from a citizen of Cyprus is established through a judicial decision.
Czech Republic	3(a), 4	Automatic	No other conditions (but: if person is born out of wedlock, only automatic if the father is a citizen and the mother is a citizen of another country or stateless).
Denmark	1(1), 2;	Automatic;	No other conditions (but: if person is born out of wedlock, only automatic if the person is an unmarried minor whose father is a citizen and marries the mother);
	6	Naturalisation (discretionary)	By (discretionary) naturalisation if the father has (shared) custody over child. No residence, language or integration requirements.
Estonia	5(1)	Automatic	No other conditions.
Finland	9(1), 11;	Automatic;	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established);
	26(1)(1)	Declaration	By declaration if paternity is established when person is an adult and father has been a citizen since person's birth.
France	18	Automatic	No other conditions.
Germany	4(1), 5	Automatic	No other conditions (but: if person is born out of wedlock, he/she must be a under the age of 23 years when the process of recognition or establishing paternity begins. For children born before 1993, child must also have been legally ordinarily resident in federal territory for three years).
Greece	1(1), 2	Automatic	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established).
Hungary	3(1), 3(2)	Automatic	No other conditions.
Iceland	1(1), 1(2), 2(1), 2(3)	Automatic	No other conditions (but: if person is born out of wedlock, only automatic if the mother is a citizen of another country and the biological father is a citizen, or if parents marry while the

[170] Par. 13-15 of the Guideline. Compare also the abovementioned decision in *Genovese v Malta*.

			person is a minor).
Ireland	7(1)	Automatic	No other conditions.
Italy	1(1)(a), 2(1); 2(2), 2(3)	Automatic; Declaration	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established); By declaration if person is adult (within one year of establishment of paternity).
Latvia	3(1)	Automatic	No other conditions.
Lithuania	14	Automatic	No other conditions.
Luxembourg	1(1)	Automatic	No other conditions (but: if person is born out of wedlock, he/she must be a minor when maternity/paternity is established and the parent must be a citizen at the time of establishment).
Macedonia	4	Automatic	No other conditions.
Malta	5(1), 17(1)(a)	Automatic	No other conditions.
Moldova	11(1)(a)	Automatic	No other conditions.
Montenegro	5	Automatic	No other conditions.
Netherlands	3(1), 4; 6(1)(c)	Automatic; Declaration	No other conditions (but: if person is born out of wedlock, he/she must be a minor whose descent from a male citizen is legally established, recognized by the father, or legitimated by marriage (if person is 7 years or older DNA proof of the paternity is required)); By declaration if person is a minor and is recognized by a citizen father who has raised and cared for him or her for 3 years.
Norway	4(1)	Automatic	No other conditions.
Poland	14(1)	Automatic	No other conditions.
Portugal	1(1)(a), 14	Automatic	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established).
Romania	5(1), 5(2)	Automatic	No other conditions.
Serbia	7	Automatic	No other conditions.
Slovakia	5(1)(a)	Automatic	No other conditions.
Slovenia	4	Automatic	No other conditions.
Spain	17(1)(a); 17(2)	Automatic; Declaration	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established); By declaration if person's descent from a male citizen has been established while person is an adult. Declaration must be made within two years after the establishment of paternity and person must declare loyalty to the head of state and obedience to the constitution and the laws of the country. Renunciation of prior citizenship, except for citizens of countries with which bilateral treaties have been concluded.
Sweden	1	Automatic	No other conditions.
Switzerland	1(1)(a), 1(1)(b), 1(2)	Automatic	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established).
Turkey	7	Automatic	No other conditions (but: if person is born out of wedlock, and

			father is a citizen, paternity must be established according to principles and procedures).
United Kingdom	1(1)a, 3, 50 (9A)	Automatic	No other conditions.

Against the background of these international standards, we can witness provisions that discriminate against men (but never women) in Austria, Denmark, Iceland and the Netherlands.[171] In Austria and Denmark, no citizenship consequences are attached to the recognition or judicial establishment of paternity. Consequently, no protection against statelessness exists if the child is born out of wedlock to a father who is a citizen of these countries. Iceland and the Netherlands require proof that the father is also the biological father (in the latter country only if the child has reached the age of seven years). Since the rules in force in these countries discriminate against men with regard to the transmission of their citizenship to their children, we argue that they violate *Genovese v. Malta*.[172]

We also submit that it is problematic in light of the judgment of the CJEU in *Rottmann* – in particular the requirement of proportionality – that there is only a very short time span in Italy and Spain during which an adult person who is born out of wedlock to an Italian respectively Spanish father can acquire citizenship of the country by declaration; no protection against statelessness exists in Italy and Spain if the person makes a declaration after more than one year (Italy) or two years (Spain) after the acknowledgment of paternity. However, at the same time it should be acknowledged that both countries go beyond their international obligations by also allowing citizenship to be acquired by *adults* who were born out of wedlock. Although the requirement that the person is a minor is in line with the international standards, we doubt that there is a legitimate reason to exclude adults from the acquisition of nationality in case they were born out of wedlock.

Finally, some countries, like e.g. Luxembourg and the Netherlands violate Article 6(1)(a) ECN by requiring that the parent is a citizen when his paternity is established, rather than at the moment of the child's birth.

[171] *Genovese v. Malta* can be read against the background that '[a]fter the near completion of the equal treatment of women in citizenship law in the 1980s […], since the 1990s most attention in matters of *ius sanguinis* application has, paradoxically, been directed at improving the status of men, particularly with regard to the transmission of citizenship in cases of children born out of wedlock or adopted'. See M.P. Vink and G.-R. de Groot, "Birthright Citizenship: Trends and Regulations in Europe", EUDO Citizenship Comparative Report (2010), 12.

[172] See G.-R. de Groot and O. Vonk, "Nationality, Statelessness and ECHR's Article 8: Comments on Genovese v. Malta", *European Journal of Migration and Law* 14, no. 3 (2012); G.-R. de Groot and O. Vonk, "Genovese tegen Malta: niet discrimineren bij toekennen nationaliteit", *Asiel- en Migrantenrecht* 3, no. 3 (2012), 136-140.

4.4 Persons born to a citizen of a country (birth abroad)

Focus: Does the country permit parents to confer their citizenship to their children who are born abroad?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 4*;

1989 Convention on the Rights of the Child, *Article 7(1)* in conjunction with *Article 3(1)*;

1950 European Convention on Human Rights, *Article 8* and *Article14* (cf. ECtHR judgment in *Genovese v. Malta*);

1997 European Convention on Nationality, Article 5(2)

In discussing the previous mode of protection against statelessness, it was already seen that the European Convention states that a Contracting State shall provide for its citizenship to be acquired by operation of law by a child one of whose parents is a citizen at the time of the child's birth (ECN 6(1)a), but that this rule may be subject to exceptions to children born abroad. Since the European Convention does not elaborate on this issue, the relevant international norm for the purposes of assessing whether there is protection for children born abroad is the 1961 Convention (CRS 4). The relationship between Articles 1 and 4 of the 1961 Convention is described in the Guideline:

> The 1961 Convention and relevant universal and regional human rights norms do not dictate the basic rules according to which nationality *must* be granted or withdrawn by States. In particular, the 1961 Convention does not require States to adopt a pure *jus soli* regime whereby States grant nationality to all children born in their territory. Similarly, it does not require adoption of the principle of *jus sanguinis*, or citizenship by descent.
>
> Rather, the 1961 Convention requires that in instances where an individual would otherwise be stateless, the Contracting State in which the child is born grants its nationality to prevent statelessness (Article 1). In the event that a child is born to a national of a Contracting State in the territory of a non-Contracting State, a subsidiary obligation comes into play and the State of nationality of the parents must grant its nationality if the child would otherwise be stateless (Article 4). As a result, the 1961 Convention addresses conflicts of nationality laws through an approach that draws on the principles of both *jus soli* and *jus sanguinis*.[173]

Contracting parties to this Convention shall grant their citizenship to persons born to a citizen, if he/she is not born in the territory of a Contracting State to the 1961 Convention and would otherwise be stateless (CRS 4). Citizenship shall be granted at birth, by operation of law, or upon an application being lodged. Subject to the following provisions, no such application may be rejected: (1) the application is lodged before the applicant reaches an age, being not less than 23 years; (2) he/she has habitually resided in the territory of the country for such period immediately preceding the lodging of the application, not exceeding 3 years; (3) has not been convicted of an offence against national security; and (4) has always been stateless. The Guideline provides the following clarification:

> Article 1 of the 1961 Convention places primary responsibility on Contracting States in whose territory children who would otherwise be stateless are born. The Convention also sets out two subsidiary rules.

[173] Par. 29-30 of the Guideline; see also principle 1 of Recommendation 2009/13.

The first subsidiary rule is found in Article 1(4) of the 1961 Convention and applies where a child who would otherwise be stateless is born in a Contracting State to parents of another Contracting State but does not acquire the nationality of the State of birth automatically and either misses the age limit to apply for nationality or cannot meet the habitual residence requirement in the State of birth. In such cases, responsibility falls to the Contracting State of the parents to grant its nationality to the child (or children) of its nationals. In these limited circumstances where Contracting States must grant nationality to children born abroad in another Contracting State to one of their nationals, States may require that an individual lodge an application and meet certain criteria set out in Article 1(5) of the 1961 Convention that are similar to those set out in Article 1(2) of the 1961 Convention.

The second subsidiary rule applies where children of a national of a Contracting State who would otherwise be stateless are born in a non-Contracting State. This rule is set out in Article 4 of the 1961 Convention and requires the Contracting State of the parents to grant its nationality to the child (or children) of its nationals born abroad. Article 4 gives Contracting States the option of either granting their nationality to children of their nationals born abroad automatically at birth or requiring an application subject to the exhaustive conditions listed in Article 4(2). These conditions are again similar to those set out in Article 1(2) of the 1961 Convention, with some distinctions.

Like Article 1, Article 4 of the 1961 Convention must be read in light of developments in international human rights law, in particular the right of every child to acquire a nationality, as set out in Article 7 of the CRC and the principle of the best interests of the child contained in Article 3 of the same Convention. As a result, Contracting States to the 1961 Convention are required to provide for automatic acquisition of their nationality at birth by a child who would otherwise be stateless and is born abroad to a national or, for States which have an application procedure, to grant nationality shortly after birth.[174]

Since it is very clear from our analysis that several countries make a distinction between children born in and out of wedlock, we also point again to the *Genovese* judgment where it was ruled that discrimination in respect of the acquisition of nationality violates Article 8 in conjunction with Article 14 ECHR.

Table 4. Acquisition of citizenship by persons born to a citizen of a country (birth abroad)

country	*articles*	*procedure*	*conditions*
Belgium	8(1)(2)(a);	Automatic;	Automatic if at least one parent is a citizen and born in the country, or if the person has not acquired citizenship of any other country at the age of 18 (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established);
	8(1)(2)(b), 8(1)(2)(c)	Declaration	By declaration within five years after birth if the child is born to a father or a mother who is a citizen and who was born outside the country.
Bulgaria	8, 9	Automatic	No other conditions.
Croatia	5	Automatic;	Automatic if one parent is a citizen and the other parent is stateless or of unknown citizenship, or if person has not acquired citizenship of any other country at the age of 18; Otherwise by registration, or if person starts residing in the country before the age of 18 (acquisition retroactive since birth).
		Registration	

[174] Par. 49-52 of the Guideline.

Cyprus	109(2); 114	Automatic; Registration (entitlement)	No other conditions (but: person must be born on or after 16 August 1960 abroad to a citizen or to parents entitled to citizenship (in case of death). If person is permanently resident abroad, the birth must also be registered in Cyprus); Person's descent from a citizen of Cyprus is established through a judicial decision.
Czech Republic	3(a), 4	Automatic	No other conditions (but: if person is born out of wedlock, only automatic if the father is a citizen and the mother is a citizen of another country or stateless).
Denmark	1(1), 2; 6	Automatic; Naturalisation (discretionary)	No other conditions (but: if person is born out of wedlock, only automatic if the person is an unmarried minor whose father is a citizen and marries the mother); By (discretionary) naturalisation if the father has (shared) custody over child. No residence, language or integration requirements.
Estonia	5(1)	Automatic	No other conditions.
Finland	9(1)(1), 9(1)(2), 9(1)(3), 11, 26(2)	Automatic	No other conditions (but: if person is born out of wedlock, father must have been a citizen since the child's birth and his paternity must have been established before the child reaches the age of 18).
France	18	Automatic	No other conditions.
Germany	4(1); 4(4); 5	Automatic; Registration; Declaration	Automatic if parent is a citizen who was born in the country or he/she was born abroad before 31 December 1999 (but: if person is born out of wedlock and only the father is a national, he/she must be a under the age of 23 years when the process of recognition or establishing paternity begins. For children born before 1993, child must also have been legally ordinarily resident in federal territory for three years); By registration within one year of birth if the person is born to a parent who is a citizen, who was born abroad after 31 December 1999, and is ordinarily resident abroad. In case the registration deadline is missed, the child still acquires citizenship if it would otherwise become stateless; By declaration if person is under 23 years of age, born out of wedlock to a citizen and a female citizen of another country before 1 July 1993, and resident in the country for 3 years.
Greece	1(1), 2	Automatic	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established).
Hungary	3(1), 3(2)	Automatic	No other conditions.
Iceland	1(1), 1(2), 2(3); 2(2)	Automatic; Declaration	No other conditions (but: if person is born out of wedlock to a father who is a citizen, only automatic if parents marry while person is a minor); By declaration if person is born to a mother who is a citizen of another country and a father who is a citizen, and the father submits a declaration for the person -who must be a minor- to acquire citizenship the country. Evidence of biological truth required. If person is 12 years or older, consent is required.

Ireland	7(1); 7(3), 27	Automatic; Registration	No other conditions; By registration if parent was born abroad (or Northern Ireland), unless parent is abroad in public service.
Italy	1(1)(a), 2(1); 2(2), 2(3)	Automatic; Declaration	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established); By declaration if person is adult (within one year of establishment of paternity).
Latvia	2(5), 3(4), 3(1), 3(2); 3(3)	Automatic; Registration	Automatic if person is born to two parents who are citizens, or to one parent who is citizen and a stateless person, or to a parent who is a citizen and who resides in the country; By registration if person is born to parents who reside abroad and only one parent is a citizen.
Lithuania	14	Automatic	No other conditions.
Luxembourg	1(1)	Automatic	No other conditions (but: if person is born out of wedlock, he/she must be a minor when maternity/paternity is established and the parent must be a citizen at the time of establishment).
Macedonia	4, 5; 5; 5	Automatic; Registration; Declaration	Automatic if both parents are citizens, if one parent is a citizen and the other parent is unknown, stateless or of unknown citizenship, or if only one parent is a citizen and the person takes up residence in Macedonia before the age of 18 with that parent; By registration (before the age of 18) if only one parent is a citizen; By declaration (between the age of 18-23) if only one parent is a citizen.
Malta	5(2), 17(1)(a)	Registration	No other conditions.
Moldova	11(1)(a)	Automatic	No other conditions.
Montenegro	5; 6(1); 6(2)	Automatic; Registration; Declaration	Automatic if person is born to two parents who are citizens, or to a parent who is a citizen and another parent who is unknown, stateless or of unknown citizenship, or if the person would otherwise be stateless; By registration (by parent before the age of 18 years) if one parent is a citizen and the person does not hold citizenship of another country; By declaration (between the age of 18-23) if one parent is a citizen and the other parent is a citizen of another state.
Netherlands	3(1), 4; 6(1)(c)	Automatic; Declaration	No other conditions (but: if person is born out of wedlock, he/she must be a minor whose descent from a male citizen is legally established, recognized by the father, or legitimated by marriage (if person is 7 years or older DNA proof of the paternity is required)); By declaration if person is a minor and is recognized by a citizen father who has raised and cared for him or her for 3 years.
Norway	4(1)	Automatic	No other conditions.
Poland	14(1)	Automatic	No other conditions.

Portugal	1(1)(b), 14;	Automatic;	Automatic if person is born to a citizen and who resides abroad in service of the country;
	POR 1(1)(c)	Registration or declaration	By registration or declaration if person is born to a citizen who resides abroad other than in service of the country.
Romania	5(1), 5(2)	Automatic	No other conditions.
Serbia	7;	Automatic;	Automatic if person is born to two parents who are citizens, or to a parent who is a citizen and another parent who is unknown, stateless or of unknown citizenship, or if the person would otherwise be stateless;
	10	Declaration	By declaration (by person between the age of 18-23) if parent is a citizen and the other parent is a foreign citizen.
Slovakia	5(1)(a)	Automatic	No other conditions.
Slovenia	4;	Automatic;	Automatic if one parent is a citizen and the other parent is unknown, of unknown citizenship or without citizenship, or when the child would otherwise be stateless;
	6	Declaration	By declaration if one parent is a citizen and the other parent is a citizen of another country, the person is between 18 and 36 years of age, and has not previously lost citizenship due to release, renunciation or deprivation.
Spain	17(1)(a);	Automatic;	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established);
	17(2)	Declaration	By declaration if person's descent from a male citizen has been established while person is an adult. Declaration must be made within two years after the establishment of paternity and person must declare loyalty to the head of state and obedience to the constitution and the laws of the country. Renunciation of prior citizenship, except for citizens of countries with which bilateral treaties have been concluded.
Sweden	1;	Automatic;	Child is born in wedlock to a Swedish parent, or out of wedlock to a Swedish mother;
	5	Declaration	By declaration (by father) if person -who must be a minor- is born out of wedlock to a father who has been a citizen since the time of the child's birth and a mother who is a foreign citizen. Father must be a citizen at the time of the declaration. Consent is required from age of 12 if the child possesses a foreign citizenship.
Switzerland	1(1)(a), 1(1)(b), 1(2)	Automatic	No other conditions (but: if person is born out of wedlock, he/she must be a minor when paternity of a male citizen is established).
Turkey	7	Automatic	No other conditions (but: if person is born out of wedlock, and father is a citizen, paternity must be established according to principles and procedures).
United Kingdom	2;	Automatic;	Automatic if parent is a citizen who acquired citizenship otherwise than by descent or is in public service of the country;
	3	Registration	By registration if person is a minor and parent has acquired citizenship by descent and has resided at any time in the country for 3 years (entitlement to acquisition if registered within one year, otherwise discretionary).

Having discussed gender discrimination issues in relation to male citizens in the previous section, it is only logical that some of these issues also arise in relation to children born abroad. We again see that in a number of countries, i.e. Austria, Denmark and Sweden,[175] no protection against statelessness exists for children born out of wedlock to a father from these countries. Needless to say, all these countries violate the ECtHR ruling in *Genovese v. Malta*. The same is true for Iceland, where proof of the biological truth is required when a child is born abroad, and for the Netherlands, where this is required if the child is older than 7 years at the moment of recognition by a national.

Moreover, we also identify another issue that is problematic from the perspective of protection against statelessness. Some countries make the acquisition of their nationality dependent on the child's registration as a national, even if the child would otherwise remain stateless. Thus, we see that there is no safeguard against statelessness under Latvian law if the parent resides abroad and the child is not registered. This is not only a clear violation of the first recommendation of Council of Europe Recommendation 2009/13, but also of Article 4 of the 1961 Convention.[176] Other violations are found in Ireland, Macedonia and the UK. A similar rule as in Latvia is found in Ireland, the difference being that the rule applies if the parent was *born* abroad rather than on the condition that he or she is *resident* abroad. In Macedonia there is no safeguard against statelessness for persons born to a citizen parent and a parent who is a citizen of another country and the person is not registered as a national. In the UK, finally, no safeguard against statelessness exists for minors who are born to a citizen parent who acquired citizenship by descent, and the person is not registered as a national within one year after a compulsory three-year residence period in the UK. British law therefore also differentiates between parents based on how they acquired citizenship, something that violates the European Convention (ECN 5(2)).

Another issue that is problematic against the background of the 1961 Convention, but also in light of considerations of proportionality as hinted at in *Rottmann*, is the rule in Italy and Spain that a person who is born out of wedlock to an Italian respectively Spanish father can only lodge a declaration to the effect of acquiring the father's nationality after one respectively two years. However, as already said above, it should be acknowledged that both countries go beyond their international obligations by also allowing citizenship to be acquired by *adults* who were born out of wedlock.

Luxembourg and the Netherlands, finally, again violate the ECN (see also S03) by requiring that the parent is a citizen when his paternity is established, rather than at the moment of the child's birth.

4.5 Persons who are recognized refugees

Focus: Does the country facilitate the naturalisation of refugees in its territory?

Relevant international standards:

1951 Convention Relating to the Status of Refugees, *Article 34*;

1997 European Convention on Nationality, Article 6(4)g in conjunction with Article 16

[175] In Sweden, the father has to make a declaration, which implies that the person is not automatically protected against statelessness.

[176] Considering that one of the issues at stake in *Genovese v. Malta* was the "denial of citizenship", it can also be argued that not granting nationality to children who would otherwise be stateless violates the tenor of this judgment.

This is the only occasion that we refer to the 1951 Convention as a relevant international instrument, since it provides that Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees, by in particular making every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings (CSR 34). The European Convention requires Contracting parties to facilitate the acquisition of its citizenship for recognized refugees that are lawfully and habitually resident (ECN 6(4)g).

A report on the 1951 Convention, originally prepared for UNHCR by Grahl-Madsen in 1963, clarifies the interpretation of the provision on naturalization. According to the author of the report, the drafters of the Convention stressed that naturalization was a matter of such delicate nature that in every case the final decision must rest with the organs of the State concerned. Grahl-Madsen quotes the drafters that the State "cannot be compelled to grant its nationality, even after a long waiting period, to a refugee settled in its territory since naturalization confers on the naturalized citizen a series of privileges including political rights".[177] The drafters continued that "without establishing formal obligations in this respect, States can be requested to facilitate to the fullest possible extent, the naturalization of refugees, inter alia by giving favourable consideration to requests for naturalization received from refugees and by reducing the financial obstacles which procedural charges and costs may represent to destitute refugees".[178]

The following comments by Grahl-Madsen are also worth quoting at length:

> The word "shall" makes it clear that Article 34 imposes a *duty* on the Contracting States, not only a recommendation. It is, however, a qualified duty. The article does not lay down an obligation to naturalize refugees, but merely a duty to facilitate "as far as possible" their assimilation and naturalization. It goes without saying that a State must judge for itself whether it is "possible" for it to naturalize a particular individual or any number of refugees. *On the other hand, the decision must be taken in good faith*. If for example a Contracting State outright fails to allow any refugee to be assimilated or naturalized, and is not able to show any other reason than unwillingness, the other Contracting States may have a ground for complaint. A Contracting State may also be prevented from lengthening the period of residence required for naturalization. In such a case a State must show good cause why it is not possible any longer to grant refugees naturalization at the expiration of the period which hitherto has been prescribed.[179]

Grahl-Madsen also remarks that Article 34 does not in a general way prescribe that refugees shall be treated better than other aliens with respect to naturalization. Rather, Article 34 requires fair treatment of refugees, but no better treatment than that accorded to other aliens, if that treatment is a favourable one. By writing the following on the interpretation of "fair treatment", however, he seems to hint at an obligation to grant easier access to refugees than to ordinary naturalisees:

> It may greatly facilitate the naturalization of great numbers of refugees if the State concerned is willing to lower its normal requirements in any or some of these respects. For example, most refugees are indigent, and too rigid implementation of financial criteria may prevent the naturalization of many of them. Similarly, refugees may be debarred from naturalization if the authorities insist on proof that they

[177] UNHCR, "Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)", (1997), 145.
[178] UNHCR, "Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)", 145.
[179] UNHCR, "Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)", 146. Emphasis added.

> have been released from their former nationality. Shortening of the period of residence required for naturalization may also be an important means of facilitating naturalization.[180]

With regard to the European Convention, its explanatory report makes it clear in par. 56 that the term "recognised refugee" can be interpreted more broadly under the European Convention than under the 1951 Convention:

> The term "recognised refugees" in sub-paragraph g [of Article 6(4)] includes, but is not limited to, those refugees recognised under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. States Parties are free to include other types of refugees in this group. Article 34 of the 1951 Geneva Convention similarly refers to facilitated naturalisation of recognised refugees.[181]

Despite the broader interpretation of the term "recognised refugee", it seems fair to say that the European Convention takes a similar position on the facilitated naturalization of recognized refugees as does the 1951 Convention. Yet unlike the 1951 Convention, but in a similar vein as Grahl-Madsen (see above), the European Convention adds that a country shall not make the renunciation or loss of another citizenship a condition for the acquisition of its citizenship where such renunciation or loss is not possible or cannot reasonably be required (ECN 16). It is clarified in the explanatory report (par. 99) that refugees cannot generally be expected to return to their country of origin or to request their diplomatic or consular representation to renounce or to obtain their release from their nationality. This report does not specifically investigate whether the countries analyzed require refugees to renounce their original nationality or whether lower naturalization fees are imposed on them.

Table 5. Facilitated acquisition of citizenship by persons who are recognized refugees

country	*articles*	*procedure*	*conditions*
Austria	11a(4)1	Naturalisation (entitlement)	Facilitation: 6 years of residence (ordinary naturalisation: 10 years).
Belgium	no provision	n.a.	n.a.
Bulgaria	13(a)	Naturalisation (discretionary)	Facilitation: 3 years of residence (ordinary naturalisation: 5 years).
Croatia	no provision	Naturalisation (entitlement)	No facilitation.
Cyprus	no provision	n.a.	No facilitation.
Czech Republic	7(1)(b), 11(1)	Naturalisation (discretionary)	No facilitation (but 5-year residence requirement for ordinary naturalisation can be waived).
Denmark	6	Naturalisation (discretionary)	Facilitation: 8 years of residence (ordinary naturalisation: 9 years).
Estonia	no provision	Naturalisation (discretionary)	No facilitation.

[180] UNHCR, "Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)", 147.
[181] http://eudo-citizenship.eu/InternationalDB/docs/ECN%20Explanatory%20Report.pdf

Finland	20	Naturalisation (discretionary)	Facilitation: 4 years of residence and the application shall be processed expeditiously. (ordinary naturalisation: 6 years)
France	21-16, 21-17, 21-19(7), 21-24-1	Naturalisation (discretionary)	Facilitation: 0 years of residence (ordinary naturalisation: 5 years). Political refugees can be exempted from language requirement if they have resided lawfully and habitually in the country for 15 years and are over 70.
Germany	8	Naturalisation (entitlement)	Facilitation: 6 years of residence (ordinary naturalisation: 8 years) and exemption from renunciation requirement.
Greece	5(1)d	Naturalisation (discretionary)	Facilitation: 3 years of residence (ordinary naturalisation: 7 years).
Hungary	4(2)d	Naturalisation (entitlement)	Facilitation: 3 years of residence (ordinary naturalisation: 8 years).
Iceland	8(6)	Naturalisation (discretionary)	Facilitation: 5 years of residence (ordinary naturalisation: 7 years).
Ireland	16(g)	Naturalisation (discretionary)	No facilitation (but residence and other requirements may be waived).
Italy	9(1), 16(2)	Naturalisation (discretionary)	Facilitation: 5 years of residence (ordinary naturalisation: 10 years).
Latvia	no provision	Naturalisation (discretionary)	No facilitation.
Lithuania	18(4)	Naturalisation (discretionary)	No facilitation.
Luxembourg	6	Naturalisation (discretionary)	No facilitation.
Macedonia	7, 7-a	Naturalisation (entitlement)	Facilitation: 6 years of residence (ordinary naturalisation: 8 years).
Malta	no provision	Naturalisation (discretionary)	No facilitation.
Moldova	17(1)c	Naturalisation (discretionary)	Facilitation: 8 years of residence (ordinary naturalisation: 10 years).
Montenegro	8, 13	Naturalisation (discretionary)	Facilitation: no language test and exemption from requirement of accommodation and guaranteed source of income sufficient for material and social security.
Netherlands	no provision	Naturalisation (entitlement)	No faciliatation.
Norway	no provision	Naturalisation (discretionary)	No facilitation
Poland	30(1)(3), 30(2), 31(2)	Naturalisation (entitlement)	Facilitation: 2 years of residence with a recognized refugee status (ordinary naturalisation: 3 years of residence with a permanent residence permit or a long term EU residence permit, or 10 years of residence in total).
Portugal	no provision	Naturalisation (entitlement)	No facilitation.

Romania	8(2)c	Naturalisation (discretionary)	Facilitation: 4 years of residence (ordinary naturalisation: 8 years).
Serbia	23	Naturalisation (discretionary)	Facilitation: 0 years of residence (ordinary naturalisation: 3 years) for refugees from another republic of the former SFRY who had the citizenship of that republic or have the citizenship of another state formed in the territory of the former SFRY.
Slovakia	7(2)e	Naturalisation (discretionary)	Facilitation: 4 years of residence (ordinary naturalisation: 8 years).
Slovenia	12(7)	Naturalisation (discretionary)	Facilitation: 5 years of residence (ordinary naturalisation: 10 years).
Spain	22(1), (3), (4)	Naturalisation (entitlement)	Facilitation: 5 years of residence (ordinary naturalisation: 10 years).
Sweden	11(4)b	Naturalisation (discretionary)	Facilitation: 4 years of residence (ordinary naturalisation: 5 years).
Switzerland	no provision	Naturalisation (discretionary)	No facilitation.
Turkey	no provision	Naturalisation (discretionary)	No facilitation.
United Kingdom	no provision	Naturalisation (discretionary)	No facilitation.

How does the legislation of the European countries under discussion relate to the 1951 Convention and the European Convention on Nationality? Many countries provide for some form of facilitated access to their nationality for refugees, although the example of Denmark shows that this can be very minimal indeed. A considerable number of countries, however, do not grant any kind of facilitation. We identify Belgium, Croatia, Cyprus, Estonia, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Switzerland, Turkey, and the UK. In many countries naturalization is only discretionary. Without more detailed research on the actual naturalization practice in these countries – that is, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Iceland, Ireland, Italy, Moldova, Montenegro, Romania, Serbia, Slovakia, Slovenia, and Sweden – it is difficult to say whether refugees are generally treated more favorably than persons who acquire citizenship via ordinary naturalisation.

4.6 Stateless persons or persons with unclear citizenship who are not covered by any other mode of protection against statelessness

Focus: Does the country facilitate the naturalisation of stateless persons in its territory?

Relevant international standards:

1954 Convention Relating to the Status of Stateless Persons, *Article 32*;

1997 European Convention on Nationality, Article 6(4)g

Having already discussed the provisions on facilitated naturalization for refugees, we can be relatively brief about similar provisions in respect of stateless persons. The relevant international instrument is the 1954 Convention, whose Article 32 is identical to the tenor of Article 34 of the 1951 Convention in that it reads that Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons, by in particular making every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings. Likewise, the abovementioned provision on refugees in the European Convention is equally applicable to stateless persons (ECN 6(4)(g)). There is no report similar to the one on the 1951 Convention in which the issue of facilitated naturalization is clarified for stateless persons. In assessing the compliance of the countries under discussion with international norms, we will therefore apply the same standards as were discussed with regard to mode S05.

Within the Council of Europe, Recommendation No. R (99) 18 of the Committee of Ministers to member States on the avoidance and reduction of stateless, adopted on 15 September 1999, provides guidance on how to deal with the naturalization of stateless persons.[182]

> Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory, and in particular each State should:
>
> a) reduce the required period of residence in relation to the normal period of residence required;
>
> b) not require more than an adequate knowledge of one of its official languages, whenever this is provided for by the internal law of the state;
>
> c) to ensure that procedures be easily accessible, not subject to undue delay and available on payment of reduced fees;
>
> d) ensure that offences, when they are relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a State.

[182] https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=538369&SecMode=1&DocId=409946&Usage=2

Table 6. Facilitated access to citizenship by stateless persons or persons with unclear citizenship who are not covered by any other mode of protection against statelessness

country	*articles*	*procedure*	*conditions*
Bulgaria	14	Naturalisation (discretionary)	Facilitation: 3 years of residence (ordinary naturalisation: 5 years).
Austria	no provision	n.a.	n.a.
Belgium	19(2)	Naturalisation (discretionary)	Discretionary facilitation: 2 years of residence (ordinary naturalisation: 5 years).
Croatia	no provision	Naturalisation (entitlement)	No facilitation.
Cyprus	no provision	n.a.	No facilitation.
Czech Rep.	7(1), 11(1)(h)	Naturalisation (discretionary)	No facilitation (but 5-year residence requirement for ordinary naturalisation can be waived).
Denmark	6	Naturalisation (discretionary)	Facilitation: 8 years of residence (ordinary naturalisation: 9 years).
Estonia	13(1)-(3)	Naturalisation (discretionary)	Facilitation: 0 years of residence (ordinary naturalisation: 8 years) and exemption from language, citizenship test. Facilitation only applies to children under the age of 15, permanently resident in Estonia and stateless.
Finland	20	Naturalisation (discretionary)	Facilitation: 4 years of residence (ordinary naturalisation: 6 years). Facilitation is limited to persons who are involuntarily stateless.
France	21-19(7), 21-24-1	Naturalisation (discretionary)	Stateless persons can be exempted from language requirement if they have resided lawfully and habitually in the country for 15 years and are over 70.
Germany	8	Naturalisation (entitlement)	Facilitation: 6 years of residence (ordinary naturalisation: 8 years).
Greece	5(1)d, 6(3)(d)	Naturalisation (discretionary)	Facilitation: 3 years of residence (ordinary naturalisation: 7 years) and exemption from language and citizenship test as well from requirement to produce certain types of identification documentation (i.e. birth certificates).
Hungary	4(4); 5a(1)(b)	Naturalisation (entitlement); Declaration	Facilitation: 5 years of residence (ordinary naturalisation: 8 years).
Iceland	no provision	Naturalisation (discretionary)	No facilitation.
Ireland	16(g)	Naturalisation (discretionary)	No facilitation (but residence and other requirements may be waived).
Italy	9(1)	Naturalisation (discretionary)	Facilitation: 5 years of residence (ordinary naturalisation: 10 years).
Latvia	15(3)	Naturalisation (discretionary)	Facilitation: 0 years of residence (ordinary naturalisation: 5 years from 4 May 1990 or for those who arrived after 1 July 1992, 5 years from acquiring a permanent residence permit)and exemption from language, income, cultural knowledge/integration requirements. Facilitation only applies to stateless children under the age of 16, adopted by a married couple, of whom one is a Latvian citizen, but the

			other is an alien, and permanently resident in Latvia.
Lithuania	no provision	Naturalisation (discretionary)	No facilitation.
Luxembourg	no provision	Naturalisation (discretionary)	No facilitation.
Macedonia	7, 7-a	Naturalisation (entitlement)	Facilitation: 6 years of residence (ordinary naturalisation: 8 years).
Malta	10(6)	Naturalisation (discretionary)	No facilitation
Moldova	17(1)(c)	Naturalisation (discretionary)	Facilitation: 8 years of residence (ordinary naturalisation: 10 years).
Montenegro	8, 14	Naturalisation (discretionary)	Facilitation: no language test and exemption from requirement of accommodation and guaranteed source of income sufficient for material and social security.
Netherlands	8(4)	Naturalisation (entitlement)	Facilitation: 3 years of residence (ordinary naturalisation: 5 years).
Norway	10, 16	Naturalisation (discretionary)	Facilitation: exemption from the requirement to be over 12 years old. 3 years of residence if person is above 18 years old; permanent residence if the person is a minor (ordinary naturalisation: 7 years)
Poland	30(1)(2)(b), 30(2), 31(2)	Naturalisation (entitlement)	Facilitation: 2 years of residence with a permanent residence permit or a long term EU residence permit (ordinary naturalisation: 3 years of residence with a permanent residence permit or a long term EU residence permit, or 10 years of residence in total).
Portugal	no provision	Naturalisation (entitlement)	No facilitation.
Romania	no provision	Naturalisation (discretionary)	No facilitation.
Serbia	no provision	Naturalisation (discretionary)	No facilitation.
Slovakia	7(2)h	Naturalisation (discretionary)	Facilitation: 3 years of residence (ordinary naturalisation: 8 years).
Slovenia	12(8)	Naturalisation (discretionary)	Facilitation: 5 years of residence (ordinary naturalisation: 10 years).
Spain	no provision	Naturalisation (entitlement)	No facilitation.
Sweden	11(4)b	Naturalisation (discretionary)	Facilitation: 4 years of residence (ordinary naturalisation: 5 years).
Switzerland	30	Naturalisation (discretionary)	Facilitation: 5 years of residence for stateless child (ordinary naturalisation: 12 years).
Turkey	11	Naturalisation (discretionary)	No facilitation.
Uni.Kingdom	Schedule 2(4)(1), 2(4)(5)	Declaration	Facilitation: 3 years of residence (ordinary naturalisation: 5 years) and exemption from language and citizenship test.

The problems related to stateless persons are generally the same as they are for refugees. In spite of different international standards dictating facilitated naturalization for stateless persons, we can see that no form of facilitated access to nationality exists in Austria, Croatia, Cyprus, Iceland, Lithuania, Luxembourg, Malta, Portugal, Romania, Serbia, Spain, and Turkey. Considering that stateless persons do not enjoy any of the rights ordinarily linked to nationality, this lack of facilitation is particularly serious. On the other hand, the practice in Germany, Hungary, Macedonia, the Netherlands, and Poland (facilitation and entitlement to naturalization) as well as in the UK (facilitation and acquisition by declaration) should be regarded as best practices. These countries seem to acknowledge a heightened responsibility for securing a nationality for stateless persons. Discretionary facilitation, finally, exists in Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Greece, Ireland, Italy, Latvia, Moldova, Montenegro, Norway, Slovakia, Slovenia, Sweden, and Switzerland. Without more knowledge on the naturalization practice of stateless persons in these countries, it is difficult to know if these persons are granted facilitated access in practice.

4.7 Persons who voluntarily renounce the citizenship of their country

Focus: Does the country permit its citizens to voluntarily renounce their citizenship if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 7(1)*;

1997 European Convention on Nationality, Article 7(3)

The right to renounce a nationality under certain circumstances was already enshrined by Article 6 of the 1930 Hague Convention:

> Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender.
>
> This authorisation may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied.

Article 12(2) stipulated in addition:

> The law of each State shall permit children of consuls *de carrière*, or of officials of foreign States charged with official missions by their Governments, to become divested, by repudiation or otherwise, of the nationality of the State in which they were born, in any case in which on birth they acquired dual nationality, provided that they retain the nationality of their parents.

Important for the interpretation of Article 7(1) of the 1961 Convention is Article 7 of the 1930 Hague Convention dealing with an expatriation permit, which is in fact a variation on loss of nationality by renunciation. The drafters of Article 7(1) of the 1961 obviously took their inspiration from the text of Article 7(1) of the 1930 Convention, which provided:

> In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality.

Differently from Article 7 (1) of the 1961 Convention, the older Convention indicates in Article 7(2) what happens if the promised nationality is not acquired:

> An expatriation permit shall lapse if the holder does not acquire a new nationality within the period fixed by the State which has issued the person.

It is regrettable that this rule was not copied in the 1961 Convention. While the international standards concerning citizens who voluntarily renounce citizenship of their country provide that this shall not result in loss of citizenship unless the person possesses or acquires citizenship of another country (CRS 7(1) and ECN 7(3)), they do not stipulate that the renunciation will lapse if another nationality is not acquired within a certain period.

All countries but one comply with the rule that renunciation of nationality cannot result in statelessness. In Greece, renunciation can lead to statelessness under the release procedure, but not if Greek citizenship is lost by declaration. A number of countries have adopted the rule from the 1930 Convention that renunciation will lapse if another nationality is not acquired within a certain period. The UK, for example, provides that the person is, *or will become within 6 months*, a citizen of another country. Consequently, there is an explicit guarantee that persons retain UK citizenship if they should not have acquired another citizenship after 6 months. Belgium, Denmark, Finland, Germany, Macedonia, Moldova, Montenegro, Norway, Serbia, Slovenia, Sweden, and Turkey have similar rules.

Finally, the risk of statelessness may also occur following the requirement to renounce one's previous citizenship as a condition for naturalization. We observe a potential risk of statelessness in at least two European States. Thus, Austria and Germany require that (most) applicants for naturalization renounce their foreign nationality before they acquire the new nationality through naturalization. Once the authorities have checked that the applicant fulfills all other conditions for naturalization, he or she is given a guarantee that naturalization will be granted ('Einbürgerungszusicherung'). However, once the applicant has renounced his or her original nationality, the authorities check again whether all the naturalization requirements are still fulfilled. Should the applicant at this point no longer meet the requirements, the naturalization is rejected and the applicant is left stateless. It is argued that this practice violates the object and purpose of the 1961 Convention. The Austrian Constitutional Court also condemned this approach in a recent decision of 29 September 2011.[183] As a result of this decision, the Austrian legislation has to be changed from 1 November 2012 onwards. It is evident that also the German approach is not in conformity with the international standards.

[183] G 154/10-8.

Table 7. Protection against statelessness for persons who voluntarily renounce the citizenship of their country

country	*articles*	*procedure*	*conditions*
Austria	37	Declaration	Person is a citizen of another country.
Belgium	22(1)(2)	Declaration	Person is, or will become, a citizen of another country. If person is not yet a citizen of another country, the declaration only works upon the effective acquisition of new citizenship.
Bulgaria	20	Release	Person is, or will become, a citizen of another country.
Croatia	18-22	Declaration / Release	Person is, or will become, a citizen of another country.
Cyprus	112	Declaration	Person is a citizen of another country.
Czech Rep.	16	Declaration	Person is a citizen of another country.
Denmark	9	Release	Person is, or will become, a citizen of another country, on the condition of acquisition of foreign citizenship within a certain time limit.
Estonia	23-27	Release	Person is, or will become, a citizen of another country.
Finland	35	Release	Person is, or will become, a citizen of another country. If not yet a citizen of another country at the time of applying for renunciation, the renunciation is conditioned on acquisition of a foreign citizenship within a time limit. Applicant is required to submit proof of such acquisition for renunciation to enter into force.
France	23-4, 23, 18-1, 19-4, 22-3, 23-2, 23-5	Release / Declaration	Person is a citizen of another country.
Germany	18-24	Release	Person is a citizen of another country or has applied for foreign citizenship and received an assurance to be granted the citizenship of that foreign country. Release from citizenship shall be deemed null and void if person fails to acquire the foreign citizenship of which s/he was assured within one year of issuance of the certificate of release.
Greece	18; 19	Release; Declaration	Person is an adult, resides abroad and declares that he/she has no connection to the country; The person is a citizen of another country, 18 years old, and has acquired citizenship of the country while being a minor by a common declaration of the parents or by naturalisation of a parent. *Loss can result in statelessness in case of release, but not in case of loss by declaration*.
Hungary	8	Declaration	Person is, or will become, a citizen of another country.
Iceland	13	Release	Person is, or will become, a citizen of another country.
Ireland	21(1)	Declaration	Person is, or will become, a citizen of another country.
Italy	11, 3(4), 14	Declaration	Person is, or will become, a citizen of another country.
Latvia	23	Release	Person is, or will become, a citizen of another country.
Lithuania	25	Declaration	Person is, or will become, a citizen of another country.
Luxembourg	13(1)	Declaration	Person is, or will become, a citizen of another country.
Macedonia	17, 18	Release	Person is, or will become a citizen of another country. If the

			person who renounced nationality does not acquire another nationality within a year of the decision to accept renunciation, the decision to accept the release of citizenship is revoked.
Malta	13	Declaration	Person is a citizen of another country.
Moldova	22	Release	Person has proof of possession or acquisition of foreign citizenship, or has received a guarantee of acquiring such citizenship. If a person, despite the guarantee, does not acquire the foreign citizenship and becomes stateless, the renunciation decision will be declared null and void.
Montenegro	20-23	Declaration	Person is, or will become, a citizen of another country. The renunciation will be revoked if the person does not acquire another nationality within a year of the renunciation.
Netherlands	15(1)(b), 16(1)(b), 16(2), 14(6)	Declaration	Person is a citizen of another country.
Norway	25	Release	Person is, or plans to become, a citizen of another country. Loss cannot result in statelessness, unless it is necessary in order to acquire another citizenship. In such cases, a time limit is set for acquisition of the foreign nationality and if it has not been acquired by the deadline, the person is not considered to have been released from citizenship.
Poland	46	Release	Person is a citizen of another country.
Portugal	8	Declaration	Person is a citizen of another country.
Romania	27	Declaration	Person is, or will become, a citizen of another country.
Serbia	33, 42;	Declaration;	Person is a citizen of another country, was born abroad and lives abroad;
	28-32, 42	Release	Person is, or will become, a citizen of another country. If a person who received release from citizenship does not acquire foreign citizenship within a year, the release shall be canceled at the request of the person.
Slovakia	9(2), 9(3)	Release	Person is, or will become, a citizen of another country.
Slovenia	18-21;	Release;	Person resides abroad and can prove or has proof that he/she will be granted citizenship of another country. Release may be granted if the person does not reside abroad and is not guaranteed a foreign citizenship, but release is considered withdrawn if these two conditions are not met within two years;
	25	Declaration	By declaration if the person is a citizen of another country.
Spain	24(2)	Declaration	Person is a citizen of another country.
Sweden	15	Release	Person is, or will become, a citizen of another country. Loss cannot result in statelessness, unless it is necessary in order to acquire another citizenship. In such cases, a time limit is set for acquisition of the foreign citizenship.
Switzerland	42	Release	Person is, or will become, a citizen of another country.
Turkey	25, 26;	Release;	Person is, or will become, a citizen of another country. If citizenship of another country is not acquired within 2 years of receiving a renunciation permit, renunciation will become invalid;
	34	Declaration	By declaration between 18 and 22 if the person acquired citizenship by descent and also acquired citizenship of another country by descent or by birth in that country, or

			person acquires citizenship by adoption, or person acquires citizenship of the country by birth in the country, or the person acquired citizenship by filial extension.
United Kingdom	12	Declaration	Person is, or will become (within 6 months), a citizen of another country.

4.8 Persons who reside outside the country of which they are a citizen

Focus: Does the country permit loss or withdrawal of citizenship for persons who reside abroad if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 7(3)-(5)*;

1997 European Convention on Nationality, Article 7(1)e in conjunction with Article 7(3), Article 5(2)

With regard to citizens who reside outside the country of which they are a citizen, we see that the provisions of the European Convention are stricter than those of the 1961 Convention. While the former provides that loss of citizenship as a result of a lack of a genuine link between a country and a citizen habitually residing abroad may not result in statelessness (ECN 7(1)e), and that the country shall be guided by the principle of non-discrimination between its nationals (ECN 5(2)), the 1961 Convention does allow statelessness on the ground of departure, residence abroad, failure to register or on any similar ground (CRS 7(3)-(5)). This only applies to two categories, however. First, a naturalized citizen may lose his/her citizenship on account of residence abroad for a period, not less than 7 consecutive years, if (s)he fails to declare to the appropriate authority his/her intention to retain citizenship. Or, second, the person is a citizen and born abroad. Retention of citizenship after the expiry of one year from the person reaching the age of majority may in the latter case be conditional on residence at that time in the country or on registration.

For the application of Article 7(3) of the 1961 Convention it is of course important to establish who are considered to be the naturalized citizens that can possibly lose their nationality under this provision, with statelessness as a consequence. Resolution II adopted during the final act of the Conference established: "Resolves that for the purposes of paragraph 4 of Article 7 of the Convention the term 'naturalized person' shall be interpreted as referring only to a person who has acquired nationality upon an application which the Contracting State concerned may in its discretion refuse".

It was stressed at the drafting Conference that persons acquiring their nationality under the terms of the 1961 Conventions should not be considered naturalized persons.[184] Article 7(3) would otherwise undermine the rules of the Articles 1-4 which aim to reduce cases of statelessness.

[184]So the delegate of the United Kingdom; see Summary Record of the 19th Meeting of the Committee of the Whole, A/CONF.9/C.1/ SR.19 (14-4-1959), p. 10.

We remark that loss of nationality by a national living abroad with statelessness as consequence will today not occur very often. Most States of residence require that non-nationals hold a residence permit issued by the State of residence in a valid foreign passport. In order to meet this requirement, a national living abroad will have to contact his national authorities with some frequency in order to get a new passport. How often a passport will need renewal depends on the temporal validity of the passport. It is reasonable to qualify the application for a new passport as registration in the sense of Article 7(4) or (5) of the 1961 Convention. Problems may therefore arise if the validity of the passport is longer than the seven-year period under Article 7(4). States which provide for this type of loss of nationality should therefore be encouraged to use a time-limit that is considerably longer than the validity of their national passports.

Table 8. Protection against statelessness by persons who lose citizenship of a country due to residence outside the country of which they are a citizen

country	*articles*	*procedure*	*conditions*
Austria	no provision	n.a.	n.a.
Belgium	22(1)(5), 22(3)	Lapse	Person was born abroad, is a citizen of another country and has resided uninterruptedly abroad from the age of 18 until 28. Loss can be prevented by making a declaration expressing the wish to remain a citizen before reaching the age of 28. Does not apply to persons holding an office and residing abroad on behalf of the government or who are staff members of an organisation/company governed by the law of the country.
Bulgaria	no provision	n.a.	n.a.
Croatia	no provision	n.a.	n.a.
Cyprus	113(4)	Withdrawal	Person acquired citizenship by naturalisation and resides abroad for 7 continuous years and (a) was not in the service of his/her country or an international organisation of which that country is a member or, (b) failed to notify his/her continued interest to retain citizenship on an annual basis. *Loss can result in statelessness*.
Czech Republic	no provision	n.a.	n.a.
Denmark	8	Lapse	Person is 22 years of age, born abroad, never resided in the country and never stayed in the country under circumstances indicating a special tie to the country, nor has he/she resided more than 7 years in a different Nordic country. Unless the person submits a request for retention before reaching the age of 22 years (discretionary).
Estonia	no provision	n.a.	n.a.
Finland	34	Lapse	Person is 22 years of age, born abroad, and currently residing abroad. Exemptions: Person has resided at least 7 years in the country or in other Nordic states before the age of 22, submits a request to retain citizenship between the age of 18 and 22, has been issued with a passport of the country, or completed military or civil service in the country.
France	23-6	Withdrawal	Person has never possessed the "status of French national" (i.e. has never applied for a passport, registered at the

			consulate or for the elections of the country), has never had habitual residence in France and his/her ancestors also did not have the status of French national, have not resided in France for 50 years and lack the "status of French national".
Germany	no provision	n.a.	n.a.
Greece	no provision	n.a.	n.a.
Hungary	no provision	n.a.	n.a.
Iceland	12	Lapse	Person is 22 years of age, born abroad, and never resided in the country. Person can submit a request to retain citizenship before reaching the age of 22 (discretionary).
Ireland	19(1)(c	Withdrawal	Person has acquired citizenship by naturalisation and has been ordinarily resident abroad for a continuous period of seven years, otherwise than in public service, and who has not declared annually his/her intention to retain citizenship. Does not apply to persons naturalised on the basis of cultural affinity to the country. *Loss can result in statelessness.*
Italy	no provision	n.a.	n.a.
Latvia	no provision	n.a.	n.a.
Lithuania	no provision	n.a.	n.a.
Luxembourg	no provision	n.a.	n.a.
Macedonia	no provision	n.a.	n.a
Malta	14(2)(d)	Withdrawal	Person has acquired citizenship by registration or naturalization and is resident abroad for at least seven years, other than in diplomatic service, and has not declared an intention to remain a citizen. *Loss can result in statelessness*.
Moldova	no provision	n.a.	n.a.
Montenegro	no provision	n.a.	n.a.
Netherlands	15(1)(c), 15(3), 15(4), 14(6)	Lapse	Person is a citizen of another country and resides outside the European Union for an uninterrupted period of 10 years for other than diplomatic purposes or work in an international organisation. Period is interrupted when the person resides in the European Union for more than 1 year, or when the person obtains a certificate of possession of citizenship or a passport-like document (period recommences upon acquisition of document).
Norway	24	Lapse	Person acquired citizenship by descent, is 22 years of age and has not resided in the country for at least 2 years, or in the country and other Nordic states for a total of 7 years. Person can submit request for retention before reaching the age of 22 and needs to demonstrate sufficient ties to the country (discretionary).
Poland	no provision	n.a.	n.a.
Portugal	no provision	n.a.	n.a.
Romania	no provision	n.a.	n.a.
Serbia	no provision	n.a.	n.a.

Slovakia	no provision	n.a.	n.a.
Slovenia	no provision	n.a.	n.a.
Spain	24(3)	Lapse	Person is 21 years of age (or 19 in exceptional cases), born abroad to a citizen who was also born abroad. Person must reside abroad. Loss can be prevented by making declaration expressing the desire to retain citizenship within 3 years of attaining majority or emancipation. Does not apply in time of war.
Sweden	14(1), 17	Lapse	Person is 22 years of age, born abroad, never resided in the country (or at least seven years in the country or another Nordic state), and never stayed in the country under circumstances indicating a special tie to the country. Person can submit request for retention before reaching the age of 22 years (discretionary). Loss cannot result in statelessness.
Switzerland	10	Lapse	Person is born abroad, resides abroad and did not register with the country before the age of 22 years.
Turkey	no provision	n.a.	n.a.
United Kingdom	no provision	n.a.	n.a.

The table shows that in all countries but three, residence abroad cannot result in statelessness. Cyprus, Ireland and Malta have rules that are in accordance with the exceptions allowed by the 1961 Convention (only Ireland is a party to the Convention). As none of these countries are bound by the stricter rules of the European Convention, they do not violate international norms binding upon them. Nevertheless, the discriminatory rules – naturalized citizens are treated differently from nationals by origin – make that these countries score low from the perspective of best practices in the protection against statelessness.

4.9 Persons who render services to a foreign country

Focus: Does the country permit loss or withdrawal of citizenship for persons who render services to a foreign country if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 8(3), 8(4)*;

1997 European Convention on Nationality, Article 5(2), Article 7

We can be fairly short about the position of the European Convention in respect of citizens who render services to a foreign country; this is not a permitted ground for loss under the exhaustive list laid down in Article 7. Under the 1961 Convention, however, and despite the main rule that countries shall not deprive a person of his/her citizenship if such deprivation would result in statelessness (CRS 8(3)), a country may retain the right to deprive someone of his/her citizenship if at the time of signature, ratification or accession it specifies its retention of such right on the ground that, inconsistently with his duty of loyalty to the country, the person has rendered or continued to render services to, or received or continued to receive emoluments from, another country. Austria, Ireland and the UK have made a declaration concerning Art. 8(3) (see appendix 2), but only Austria currently has this ground for loss in its national legislation.

Importantly, the 1961 Convention contains an often-neglected provision which provides that a country shall not exercise its power of deprivation under this exception unless the person has the right to a fair hearing by a court or other independent body (CRS 8(4)). This right to fair hearing equally applies to modes S11 and S13. It is expected that the requirement of a fair hearing will become more prominent after the recent *Rottmann* and *Genovese* judgments.[185]

Table 9. Protection against statelessness for persons who lose citizenship of a country by rendering services to a foreign country

country	*articles*	*procedure*	*conditions*
Austria	33	Withdrawal	Person is in the service of another country and her/his actions substantially damage the interests and reputation of the country. *Loss can result in statelessness*.
Belgium	no provision	n.a.	n.a.
Bulgaria	no provision	n.a.	n.a.
Croatia	no provision	n.a.	n.a.
Cyprus	no provision	n.a.	n.a.
Czech Republic	no provision	n.a.	n.a.
Denmark	7(2)	Lapse	Person acquires citizenship of another country by undertaking public service there.
Estonia	28(1)(1), 28(3)	Withdrawal	Person enters state public service of another country without permission from his/her country. Does not apply if person has acquired citizenship by birth. *Loss can result in statelessness*.
Finland	no provision	n.a.	n.a.
France	23-8	Withdrawal	Person is in public service of another country despite a request to resign from that function from his/her government. *Loss can result in stateless*.
Germany	no provision	n.a.	n.a.
Greece	17(1)(a)	Withdrawal	Person has accepted a public service position in another country against the express prohibition by his/her government. *Loss can result in statelessness.*
Hungary	no provision	n.a.	n.a.
Iceland	no provision	n.a.	n.a.
Ireland	no provision	n.a.	n.a.
Italy	12(1)	Lapse	Person serves in the civil service of another country despite a request from his/her government to resign from this function. *Loss can result in statelessness*.
Latvia	24(1)(2)	Withdrawal	Person serves in the armed forces, internal military forces, or

[185] See in more detail G.-R. de Groot and O. Vonk, "Scrutinising Citizenship Decisions: Analysing Judicial Review in Europe", EUDO Citizenship Comparative Analysis (forthcoming).

			security services of another country without permission from his/her government. *Loss can result in statelessness*.
Lithuania	24(4)	Withdrawal	Person is in the service of another country without authorisation of the state. *Loss can result in statelessness*.
Luxembourg	no provision	n.a.	n.a.
Macedonia	no provision	n.a.	n.a
Malta	no provision	n.a.	n.a.
Moldova	no provision	n.a.	n.a.
Montenegro	no provision	n.a.	n.a.
Netherlands	no provision	n.a.	n.a.
Norway	no provision	n.a.	n.a.
Poland	no provision	n.a.	n.a.
Portugal	no provision	n.a.	n.a.
Romania	no provision	n.a.	n.a.
Serbia	no provision	n.a.	n.a.
Slovakia	no provision	n.a.	n.a.
Slovenia	no provision	n.a.	n.a.
Spain	25(1)(b)	Lapse	Person has acquired citizenship other than by birth ("de origen") and exercises political office in another country against express prohibition from his/her government. *Loss can result in statelessness*.
Sweden	no provision	n.a.	n.a.
Switzerland	no provision	n.a.	n.a.
Turkey	29(a)	Withdrawal	Person renders services to another country against the interests of his/her country and does not voluntarily terminate these services within three months after receiving a notification issued by authorities of his/her country. *Loss can result in statelessness*.
United Kingdom	no provision	n.a.	n.a.

A number of violations of the 1961 Convention and the European Convention can be observed. First, there is no protection against statelessness in Austria, Estonia, France, Greece, Italy, Latvia, Lithuania, Spain and Turkey. Of these seven countries, only Austria and Latvia ratified the 1961 Convention, and only Austria also ratified the European Convention. However, while Latvia violates the 1961 Convention by not having made the abovementioned declaration, Austria made this declaration both to the 1961 Convention and the European Convention (see appendix 3). Austrian legislation is therefore in line with the international obligations of this country, but scores low from the perspective of good practices.

Second, in contrast to the 1961 Convention, which speaks of deprivation, loss takes place automatically (lapse) in Italy and Spain.[186] Neither country is party to the 1961 Convention, however. Finally, Estonia and Spain discriminate against naturalized citizens (ECN 5(2)) by not allowing for the loss of citizenship if the person is a citizen by birth, although we add that neither State is party to the European Convention.

4.10 Persons who render military service to a foreign country

Focus: Does the country permit loss or withdrawal of citizenship for persons who render military service to a foreign country if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 8*;

1997 European Convention on Nationality, Article 7(3) in conjunction with Article 4(b), Article 5(2)

Rendering military service to a foreign state is mentioned as a ground for loss in the European Convention, but not expressly in the 1961 Convention.[187] In the 1961 Convention this ground for loss is covered by the more general provision of Article 8(3). Loss due to foreign military service is explicitly not allowed to result in statelessness under the European Convention (ECN 7(3)). The Explanatory Memorandum to the ECN explains that it does not matter whether the person involved served in the official army of another state or not. The provision covers every voluntary military service in any foreign military force irrespective of whether it is part of the armed forces of a foreign state.

In respect of the 1961 Convention, Austria has been the only country making a declaration to the effect that it retains the right to deprive a person of his or her citizenship if such person enters, on his own free will, the military service of a foreign State. Upon ratification of the European Convention, Austria was again the only country lodging a declaration to the effect that its citizens can be deprived of Austrian citizenship due to foreign military service, and that this can result in statelessness (see appendices 2 and 3). Although Austria therefore scores low from the viewpoint of best practices, its loss provision regarding military service does not violate any international norms that are binding on the country.

The countries where statelessness can arise from loss of nationality, in violation of international norms, are Cyprus, Estonia, France, Greece, Italy, Latvia, Lithuania, Romania, Spain and Turkey. Moreover, this ground for loss does not apply in Estonia and Spain to citizens by birth. Both countries therefore discriminate against citizens who acquired their citizenship other than by birth (ECN 5(2)).

[186] Although this ground for loss is not permitted under the exhaustive list laid down in the European Convention (ECN 7), we observe on a general note that the European Convention allows States to provide for loss *ex lege* (lapse) or upon the initiative of the State (deprivation). We submit that *ex lege* loss is clearly problematic in light of the obligation to provide for a fair hearing under Article 8(4) of the 1961 Convention.

[187] The explanatory memorandum to the ECN explains that it does not matter whether the person involved serves in the official army of another state or not. The provision covers every voluntary military service in any foreign military force irrespective of whether it is part of the armed forces of a foreign state.

Table 10. Persons who render military service to a foreign country

country	*articles*	*procedure*	*conditions*
Austria	32	Lapse	Person voluntarily enters military service of another country. *Loss can result in statelessness*.
Belgium	no provision	n.a.	n.a.
Bulgaria	no provision	n.a.	n.a.
Croatia	no provision	n.a.	n.a.
Cyprus	113(3)(b)	Withdrawal	Person acquired citizenship by naturalisation and serves in the army of a country at war with his/her country. *Loss can result in statelessness*.
Czech Republic	no provision	n.a.	n.a.
Denmark	no provision	n.a.	n.a.
Estonia	28(1)(1),28(1)(2), 28(3)	Withdrawal	Person enters military service of another country without permission from his/her country, joins the intelligence or security service of another country or a foreign organization which is armed or militarily organized or which engages in military exercises. Does not apply if the person has acquired citizenship by birth. *Loss can result in statelessness*.
Finland	no provision	n.a.	n.a.
France	23-8	Withdrawal	Person serves in the army of another country despite a request to resign from his/her government. *Loss can result in statelessness*.
Germany	28	Lapse	Person is a citizen of another country and voluntarily enters in the army or a comparable armed organization of that country without permission of his/her government (exception: if this is permitted under intergovernmental agreement).
Greece	17(1)(a)	Withdrawal	Person has accepted a public service position in another country against the express prohibition by his/her government. *Loss can result in statelessness*.
Hungary	no provision	n.a.	n.a.
Iceland	no provision	n.a.	n.a.
Ireland	no provision	n.a.	n.a.
Italy	12(1)	Lapse	Person serves in the army of another country despite a request from his/her government to resign from this function. *Loss can result in statelessness*.
Latvia	24(1)(2)	Withdrawal	Person serves in the armed forces, internal military forces, or security services of another country without permission from his/her government. *Loss can result in statelessness*.
Lithuania	2(5), 24(4)	Withdrawal	Person serves in the military of another country without authorisation of the state. *Loss can result in statelessness*.
Luxembourg	no provision	n.a.	n.a.

Macedonia	no provision	n.a.	n.a
Malta	no provision	n.a.	n.a.
Moldova	23(1)(b), 23(2)	Withdrawal	Person is also a citizen of another country voluntarily enrolled in the service of a foreign army.
Montenegro	24(7)	Withdrawal	Person is also a citizen of another country and voluntarily serves in the army of that country.
Netherlands	15(1)e	Lapse	Person must be a citizen of another country and in voluntary service of an army of a hostile state.
Norway	no provision	n.a.	n.a.
Poland	no provision	n.a.	n.a.
Portugal	no provision	n.a.	n.a.
Romania	25(1)b	Withdrawal	Person serves in the army of a country with which his/her country has broken diplomatic relations or is at war. *Loss can result in statelessness*.
Serbia	no provision	n.a.	n.a.
Slovakia	no provision	n.a.	n.a.
Slovenia	no provision	n.a.	n.a.
Spain	25(1)(b)	Lapse	Person has acquired citizenship other than by birth ("de origen") and voluntarily serves in army of another country. *Loss can result in statelessness*.
Sweden	no provision	n.a.	n.a.
Switzerland	no provision	n.a.	n.a.
Turkey	29(c)	Withdrawal	Person voluntarily serves in the military of another country without permission of his/her country. *Loss can result in statelessness*.
United Kingdom	no provision	n.a.	n.a.

4.11 Persons who are disloyal to the country of which they are a citizens or whose conduct is seriously prejudicial to the vital interests of that country

Focus: Does the country permit loss or withdrawal of citizenship for persons who are disloyal to the country or whose conduct is seriously prejudicial to the vital interests of the country if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 8(3), 8(4)*;

1997 European Convention on Nationality, Article 4(b) in conjunction with Article 7(3), Article 5(2)

Disloyalty or conduct that is seriously prejudicial to the vital interests of a country is a legitimate ground for deprivation under the 1961 Convention and for deprivation or lapse under the European Convention. While the latter Convention does not allow for any exceptions to the rule that this ground for loss cannot result in statelessness (ECN 7(3)), the 1961 Convention provides that states may retain the right to deprive a person of his or her citizenship, if at the time of signature, ratification or accession it specifies its retention of such

right on the ground that, inconsistently with his duty of loyalty the person has (a) taken an oath, or made a formal declaration, of allegiance to another country, or given definite evidence of his determination to repudiate his allegiance to the country; or (b) has conducted himself in a manner seriously prejudicial to the vital interests of the country (CRS 8(3)).

An important issue discussed during the conference was the relationship between the grounds for loss mentioned in Article 8(3)(a) and (b) and the words "inconsistent with his duty of loyalty to the Contracting State". It was underpinned that these words "acted as a limitation on the provisions immediately following them".

> There might be cases of services, rendered to another State which no one could expect to be considered possible grounds for deprivation of nationality – such as humanitarian services in the event of shipwreck. The intention was to make it quite clear that the services contemplated were of the type inconsistent with the duty of loyalty. The words in question also provided protection for the individual in a number of possible cases – where, for instance, he was subject to force majeure, or was insane and not responsible for his actions.[188]

The explanatory report to the ECN stresses that the conduct involved notably includes treason and other activities directed against the vital interests of the state concerned (for example work for a foreign secret service) but does not include criminal offences of a general nature, however serious they may be. We think it advisable to interpret the exception of Article 8(3)(a)(ii) of the 1961 Convention in a similar way.

In some countries that do not apply this ground for loss, the Constitution contains explicit provisions that citizens should not be deprived of their citizenship unless they renounce their citizenship voluntarily (see for example the German Basic Law, Article 16(1); and the Polish Constitution, Article 34(2)). These provisions can be traced back to historical experiences with authoritarian regimes.

Table 11. Persons who are disloyal to the country of which they are a citizen or whose conduct is seriously prejudicial to the vital interests of that country

country	*articles*	*procedure*	*conditions*
Austria	no provision	n.a.	n.a.
Belgium	23(1)(2), 23/1	Withdrawal	Person has acquired citizenship other than by birth and has violated his/her duties as a national or has been convicted for committing a serious crime against the country. *Loss can result in statelessness.*
Bulgaria	24	Withdrawal	Person has acquired citizenship by naturalisation, resides abroad and has been convicted for committing a serious crime against his/her country.
Croatia	no provision	n.a.	n.a.
Cyprus	113(3)(a), 113(3)(b)	Withdrawal	Person acquired citizenship by naturalisation and has shown disloyalty via words or deeds, or has, in any war in which his/her country was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to

[188] See remarks of the delegate of the United Kingdom in the Summary Record of the 20th Plenary Meeting, A/CONF.9/ SR.20 (23-8-1961), p. 8.

			assist an enemy in that war. *Loss can result in statelessness*.
Czech Rep.	no provision	n.a.	n.a.
Denmark	8B	Withdrawal	Person is convicted for offences against the independence and safety of his/her country or against its constitution and supreme authorities, or the person is convicted in another country for similar offences.
Estonia	28(1)(3), 28(3)	Withdrawal	Person forcibly attempts to change the constitutional order of his/her country. Does not apply if the person acquired citizenship by birth. *Loss can result in statelessness*.
Finland	no provision	n.a.	n.a.
France	25(1), 25(4), 23-7	Withdrawal	Person acquired citizenship by declaration, naturalization or reacquisition and committed a crime against the basic interests of the country or a terrorist act or offered services to a foreign state (limit: act committed before acquisition or within ten years and deprivation within 10 years or 15 years after act) or the person is citizen of another country and acts as belonging to that country.
Germany	no provision	n.a.	n.a.
Greece	17(1)(b)	Withdrawal	Person resides abroad and acts against the interests of his/her country. *Loss can result in statelessness*.
Hungary	no provision	n.a.	n.a.
Iceland	no provision	n.a.	n.a.
Ireland	19(1)(b)	Withdrawal	Person has acquired citizenship by naturalisation and has, by any overt act, shown him/herself to have failed in the duty of fidelity to the nation and loyalty to the country. *Loss can result in statelessness.*
Italy	no provision	n.a.	n.a.
Latvia	no provision	n.a.	n.a.
Lithuania	22(1), 22(2)	Withdrawal	Person acquired citizenship by naturalisation under the simplified procedure or by way of exception, or restoration and prepared, attempted to commit or committed international crimes such as aggression, genocide, crimes against humanity, war crimes, or prepared, attempted to commit or committed criminal acts against the country. *Loss can result in statelessness*.
Luxembourg	no provision	n.a.	n.a.
Macedonia	no provision	n.a.	n.a
Malta	14(2)(a), 14(2)(b)	Withdrawal	Person has acquired citizenship by registration or naturalization and has shown him/herself by act or speech to be disloyal or disaffected towards the country or has, during any war in which the country was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his/her knowledge carried on in such a manner as to assist an enemy in that war. *Loss can result in statelessness*.
Moldova	23(1)(c), 23(2)	Withdrawal	Person has committed acts that are seriously prejudicial to the vital interests of the country.

Montenegro	24(4), 24(5)	Withdrawal	Person has been convicted for crimes against humanity or for complicity in terrorist activities;
	24(6)	Withdrawal	Person is a member of an organization whose activities are directed against public order and security of the country;
	24(8)	Withdrawal	Person behaves in a way that is harmful to vital interests of the country.
Netherlands	14(2)	Withdrawal	Person must be convicted for crimes against the security of the state, the royal dignity, the heads of befriended states, or against the exercise of certain rights and duties affecting the (democratic) organisation of the state (crimes which carry a prison sentence of 8 years or more), or the person has committed a terrorist crime, or the person has committed certain crimes as described in the Statute of Rome.
Norway	no provision	n.a.	n.a.
Poland	no provision	n.a.	n.a.
Portugal	no provision	n.a.	n.a.
Romania	25(1)a;	Withdrawal	Person resides abroad and acts against the interests of his/her country;
	25(1)d	Withdrawal	Person supports a terrorist organization and puts at risk the national security of the country. *Loss can result in statelessness*.
Serbia	no provision	n.a.	n.a.
Slovakia	no provision	n.a.	n.a.
Slovenia	26(1)-(4)	Withdrawal	Person is a citizen of another country, resides abroad and acts contrary to the international and other interests of Slovenia. Activities considered harmful: member of an organisation engaged in activities to overthrow the constitutional order, or a member of a foreign intelligence service and as such harming the interests of the country or harming such interests by serving under any government authority or organisation of a foreign state, or a persistent perpetrator of criminal offences prosecuted ex officio and of offences against public order, or the person refuses to carry out the duty of a citizen as prescribed by the constitution and the law, despite the appeal of the competent authority. *Loss can result in statelessness*.
Spain	no provision	n.a.	n.a.
Sweden	no provision	n.a.	n.a.
Switzerland	48	Withdrawal	Person displays conduct adverse to the interests or the reputation of his/her country.
Turkey	29(b)	Withdrawal	Person voluntarily renders any kind of service to another country that is at war with his/her country, without permission of authorities of his/her country. *Loss can result in statelessness.*
United Kingdom	40(2)	Withdrawal	Person has committed an act that is seriously prejudicial to the vital interests of his/her country.

The table shows that this ground for loss can be found in around half of the countries. (On a general note, we also observe that most national provisions are drafted in rather general and sometimes vague terms.) Upon signing the 1961 Convention, Austria, Ireland, and the UK specified that they retain the right to deprive citizens of their nationality (in the case of Ireland and the UK only for *naturalized* citizens) on grounds of disloyalty or seriously prejudicial conduct (see appendix 2). Currently, only Ireland has this ground for loss in its citizenship legislation. Not being bound by the European Convention, which prohibits discrimination of

naturalized citizens under Article 5(2), Ireland thus acts in compliance with the international norms binding upon the country.

The countries that violate international norms because they allow statelessness to arise from a deprivation or lapse of citizenship due to disloyal behaviour are Belgium, Cyprus, Estonia, Greece, Ireland, Lithuania, Malta, Romania, Slovenia and Turkey. Countries that additionally discriminate against naturalized citizens are Belgium, Cyprus, Estonia, Ireland, Lithuania and Malta, as well as Bulgaria and France. In the latter two countries, however, loss cannot result in statelessness.

Although many of these provisions are old and probably not often applied in practice, the problems raised by the unequal treatment of citizens – natural born versus naturalized – and the creation of statelessness are serious. The fact that many provisions are also rather general in scope makes this ground for loss a potential source of legal insecurity.

4.12 Persons who commit other (criminal) offences

Focus: Does the country permit loss or withdrawal of citizenship for persons who commit criminal offences (other than acquisition of citizenship by fraud) if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 8*;

1997 European Convention on Nationality, Article 7, Article 5(2)

Considering that both the 1961 Convention and the European Convention contain an exhaustive list of grounds for loss, in the case of the former exclusively focused on the issue of statelessness, we can observe that neither Convention permits that states provide for the loss of citizenship for citizens who commit (criminal) offences other than those already listed in any other mode of protection against statelessness. Nevertheless, this ground for loss exists in Cyprus and Lithuania and can also result in statelessness. France also allows for the loss of its citizenship, but loss is not allowed to render a person stateless. Malta, finally, discriminates against naturalized citizens. The legislation of these countries – and for our purposes especially Cyprus and Lithuania, where loss can also result in statelessness – is therefore not in line with international standards.

Table 12. Persons who commit other (criminal) offences

country	*articles*	*procedure*	*conditions*
Austria	no provision	n.a.	n.a.
Belgium	23/1	Withdrawal	Person has acquired citizenship other than by birth and has been convicted for committing a serious crime – such as genocide, crime against humanity, terrorist acts – or whose marriage has been annulled for being a marriage of convenience.
Bulgaria	no provision	n.a.	n.a.
Croatia	no provision	n.a.	n.a.
Cyprus	113(3)(c)	Withdrawal	Person acquired citizenship by naturalisation and has been sentenced, within 5 years of the acquisition of citizenship, in any country for any offence carrying a sentence of more than 12

			months. *Loss can result in statelessness*.
Czech Rep.	no provision	n.a.	n.a.
Denmark	no provision	n.a.	n.a.
Estonia	no provision	n.a.	n.a.
Finland	no provision	n.a.	n.a.
France	25(2), 25(3)	Withdrawal	Person has acquired citizenship by declaration, naturalisation or reacquisition and misconducts in office (corruption, abuse of official authority) or evades military service (limit: one year before to ten years after the acquisition of citizenship).
Germany	no provision	n.a.	n.a.
Greece	no provision	n.a.	n.a.
Hungary	no provision	n.a.	n.a.
Iceland	no provision	n.a.	n.a.
Ireland	no provision	n.a.	n.a.
Italy	no provision	n.a.	n.a.
Latvia	no provision	n.a.	n.a.
Lithuania	22(3), 24(6)	Withdrawal	Person who acquired citizenship by naturalisation, under the simplified procedure or by way of exception, or restoration and who prior to coming to reside in the country, was sentenced to imprisonment in another state for a premeditated crime which is a grave crime under the laws, or was punished for a grave crime in the country, irrespective of whether or not the conviction for the crimes has expired. *Loss can result in statelessness*.
Luxembourg	no provision	n.a.	n.a.
Macedonia	no provision	n.a.	n.a
Malta	14(2)(c)	Withdrawal	Person has acquired citizenship by registration or naturalization and within seven years after becoming naturalized or registered as a citizen has been sentenced in any country to a punishment for a term of not less than twelve months.
Moldova	no provision	n.a.	n.a.
Montenegro	no provision	n.a.	n.a.
Netherlands	no provision	n.a.	n.a.
Norway	no provision	n.a.	n.a.
Poland	no provision	n.a.	n.a.
Portugal	no provision	n.a.	n.a.
Romania	no provision	n.a.	n.a.
Serbia	no provision	n.a.	n.a.
Slovakia	no provision	n.a.	n.a.
Slovenia	no provision	n.a.	n.a.
Spain	no provision	n.a.	n.a.
Sweden	no provision	n.a.	n.a.
Switzerland	no provision	n.a.	n.a.
Turkey	no provision	n.a.	n.a.
Uni.Kingdom	no provision	n.a.	n.a.

4.13 Persons who have acquired citizenship by fraud

Focus: Does the country permit loss or withdrawal of citizenship for persons who have acquired citizenship by fraud if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 8(2), 8(4)*;

1997 European Convention on Nationality, Article 7(3) in conjunction with Article 4(b)

There is widespread acceptance among the international instruments that fraud is a legitimate ground for loss of citizenship, even if this would render a person stateless. Thus, despite the general rule in the 1961 Convention that a Contracting State shall not deprive someone or his/her citizenship if such deprivation would result in statelessness, the state may still deprive a person of his/her citizenship where it was obtained by misrepresentation or fraud, also if this results in statelessness (CRS 8(2)). It should be stressed, however, that the 1961 Convention also states that a country shall not exercise its power under this exception unless the person has the right to a fair hearing by a court or other independent body (CRS 8(4)).

The position of the European Convention on the issue of fraud is identical to that of the 1961 Convention. Despite the general rule that a country may not provide in its internal law for the loss of its citizenship – by operation of law (lapse) or at its own the initiative (deprivation) – if the person affected would thereby become stateless (ECN 7(3)), the only exception to this rule is acquisition by fraud.

Despite the clear consensus among the international norms that fraud can be a ground for loss and can also lead to statelessness, we feel that the overarching norm of statelessness prevention cannot be dismissed in an automatic manner. As is underlined by Council of Europe Recommendation 99 (18):

> In order to avoid, as far as possible, situations of statelessness, a state should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the state concerned, should be taken into account […].[189]

The requirement of a genuine and effective link between a person and a state means an important limitation to the automatic application by states of a revocation of citizenship as a result of fraud. Whenever the person has developed a genuine and effective link with the state in question, it is argued that a limitation period has to be taken into consideration.[190] In this connection we also remark that it was discussed at the drafting Conference of the 1961 Convention whether it would be desirable to introduce a temporal limitation on the possibility of a deprivation of nationality because of fraud. A Danish amendment to the effect of adding

[189] https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=538369&SecMode=1&DocId=409946&Usage=2.

[190] For a comparative analysis of these time limits in different European countries, see G.-R. de Groot and M.P. Vink, "Loss of Citizenship: Trends and Regulations in Europe", 15ff.

the words "provided deprivation takes place within five years after acquisition of the nationality", was originally adopted but later removed again.

Table 13. Persons who have acquired citizenship by fraud

country	*articles*	*procedure*	*conditions*
Austria	24	Nullificatio n	Person acquired citizenship based on a faked document or wrong information, criminal activity, or by fraud in some other way. Based on General Law on Administrative Procedures. *Loss can result in statelessness.*
Belgium	23(1)(1), 23(9)(2)	Withdrawal	Person has acquired citizenship other than by birth and has acquired citizenship by means of false representation, use of forged documents or concealment of facts which would have precluded the granting of citizenship (expiration period of 5 years). *Loss can result in statelessness*.
Bulgaria	22	Nullificatio n	Person has acquired citizenship by naturalisation based on false data and facts, or has concealed such facts that could have justified a negative decision. Time limit of 10 years. *Loss can result in statelessness.*
Croatia	no provision	n.a.	n.a.
Cyprus	113(2)	Withdrawal	Person acquired citizenship by registration or naturalisation and intentionally provided false or misleading information or held back information which was decisive for the acquisition of citizenship. *Loss can result in statelessness*.
Czech Republic	no provision	n.a.	n.a.
Denmark	8A	Withdrawal	Person acquired citizenship and has intentionally provided false or misleading information or held back information, which was decisive for the acquisition of citizenship. *Loss can result in statelessness*.
Estonia	28(1)(4)	Withdrawal	Person has acquired citizenship by naturalisation or reacquisition based on false information and thereby conceals facts which would have precluded the grant or reacquisition of citizenship. *Loss can result in statelessness*.
Finland	33(1), 33(3), 33(4)	Withdrawal	Person has acquired citizenship by declaration or naturalisation by providing false or misleading information, or withheld relevant information, decisive for the acquisition of citizenship (time limit: 5 years). Consideration of the person's situation, culpability of the act, circumstances in which fraud is committed and his/her ties with the country and, for minors, also age. *Loss can result in statelessness.*
France	27-2	Withdrawal	Person has acquired citizenship by declaration, naturalisation or reacquisition while failing to meet statutory requirements or based on misrepresentation or fraud (limit: two years after discovery). *Loss can result in statelessness*.
Germany	35	Withdrawal	Person has acquired, or has been allowed to retain, citizenship by willful deceit, threat, bribe or by giving willfully wrong or incomplete information (time limit: 5 years). *Loss can result in*

			statelessness.
Greece	Administrative law	Withdrawal	Person has acquired citizenship based on false information or fraud (provision based on general principle of administrative law). *Loss can result in statelessness*.
Hungary	9	Withdrawal	Person has acquired citizenship, otherwise than by birth, due to false information or fraud in procedure of acquisition (time limit: 10 years). *Loss can result in statelessness*.
Iceland	no provision	n.a.	n.a.
Ireland	19(1)(a)	Withdrawal	Person has acquired citizenship by naturalisation based on fraud, misrepresentation or concealment of material facts or circumstances. *Loss can result in statelessness*.
Italy	no provision	n.a.	n.a.
Latvia	24(1)(3)	Withdrawal	Person has knowingly provided false information when verifying a right to hold citizenship of the country, or when acquiring citizenship by naturalisation. *Loss can result in statelessness.*
Lithuania	24(5)	Withdrawal	Person acquired citizenship by means of forged documents or any other fraud. *Loss can result in statelessness*.
Luxembourg	25	Withdrawal	Person has acquired citizenship, otherwise than by descent, by providing false information, fraud or dissimulation in procedures to acquire nationality.
Macedonia	14	Nullification	Person has acquired citizenship by naturalisation, based on false or incorrect information, or forged documents. *Loss can result in statelessness.*
Malta	14(1)	Withdrawal	Person has acquired citizenship, by registration or naturalization, by means of fraud, false representation or the concealment of any material fact. *Loss can result in statelessness*.
Moldova	23(1)(a)	Withdrawal	Person has acquired citizenship by means of fraudulent conduct, false information or concealment of any relevant fact. *Loss can result in statelessness*.
Montenegro	24(2)	Withdrawal	Person has acquired citizenship and has intentionally provided false or misleading information or held back information, which was decisive for the acquisition of citizenship.
Netherlands	14(1)	Nullification	Person has acquired citizenship based on false information or fraud in procedure (time limit: 12 years, unless the person is convicted for one of the offences referred to in articles 6, 7 or 8 of the Rome Statute of the International Criminal Court). No right to fair hearing and *loss can result in statelessness.*
Norway	26(2)	Withdrawal	In acquiring citizenship, the person has provided incorrect or incomplete information against his or her better judgment or has suppressed circumstances of substantial importance for the decision granting, or allowing to retain, citizenship. *Loss can result in statelessness.*
Poland	no provision	n.a.	n.a.
Portugal	16, 18 in conjunction with artt. 87-88 of the Civil Registry Code	Nullification	Person has acquired citizenship based on false information or on an inexistent fact. *Loss can result in statelessness*.

Romania	25(1)c	Withdrawal	Person has acquired citizenship due to fraud. *Loss can result in statelessness.*
Serbia	45	Nullification	Person has acquired citizenship and has intentionally provided false or misleading information or held back information, which was decisive for the acquisition of citizenship.
Slovakia	8b(1)	Nullification	Person acquired citizenship with falsified documents or documents that did not belong to him/her, or the person failed to inform the authorities of facts that could have substantial influence on the decision, or citizenship was acquired as a result of a crime, or the documents to acquire citizenship were obtained through criminal action.
Slovenia	16(1)	Nullification	Person has acquired citizenship by naturalisation based on false declarations or deliberate concealment of essential facts or circumstances. *Loss can result in statelessness*.
Spain	25(2)	Nullification	Person has acquired citizenship, other than by birth ("de origen"), by fraud, falsity, or concealment of information (time limit: 15 years). Loss does not have detrimental effects on third parties in good faith. *Loss can result in statelessness*.
Sweden	no provision	n.a.	n.a.
Switzerland	41	Nullification	Person has acquired citizenship based on false information or concealement of relevant facts (time limit: 8 years and withdrawal must take place within 2 years after discovery fraudulent behaviour). *Loss can result in statelessness*.
Turkey	31	Nullification	Person has acquired citizenship by naturalization based on false information or concealment of relevant facts. *Loss can result in statelessness.*
United Kingdom	40(3)	Withdrawal	Person has acquired citizenship by declaration or naturalisation as a result of fraud, false representation or concealment of fact. *Loss can result in statelessness*.

Although the international norms are rather similar, it can be observed that the European Convention allows for loss by operation of law (*ex lege*), while the 1961 Convention only allows for deprivation. This distinction is not relevant in the European context, however, because the analysis shows that in all countries where this ground for loss can be found, the procedure for loss is by withdrawal or nullification.[191] Countries where loss due to fraud does not exist are Croatia, the Czech Republic, Iceland, Italy, Poland and Sweden, while loss cannot result in statelessness in Luxemburg, Montenegro and Serbia. Consequently, we could say that all these countries have norms that can be qualified as best practices from the viewpoint of the prevention of statelessness.

All other countries act in accordance with the international consensus that fraud can be a ground for loss of citizenship, and that this loss is allowed to render a person stateless. There are, however, frequent problems with regard to the right to a fair hearing.[192] Suffice it to point here at the example of the Netherlands, where the Nationality Act provides for the possibility to withdraw a naturalization decision with retroactive effect when it is discovered that Dutch nationality was acquired by fraud (NET 14(1)).[193] The decision to withdraw Dutch nationality can only be taken if all relevant circumstances are taken into account. A decision

[191] With the exception of e.g. the Netherlands in case of identity fraud if naturalization took place before 2003.
[192] See G.-R. de Groot and O. Vonk, "Scrutinising Citizenship Decisions: Analysing Judicial Review in Europe".
[193] See also O. Vonk and K. Hendriks, "Mapping statelessness in the Netherlands".

to withdraw nationality will be communicated to the person concerned, who then has six weeks to object this decision with the administrative authorities responsible for taking the decision (the Immigration and Naturalization Department). If the objection fails, the withdrawal takes immediate effect and the person will have to hand in his or her Dutch passport. While the person can appeal this decision in court, it follows from the above that he or she can only do this as a non-Dutch national. This state of affairs is for several reasons very problematic.

First, it is subject to doubt whether this method is in tune with EU law, particularly the *Rottmann* decision,[194] which stresses the importance of the principle of proportionality. In this context proportionality implies that the gravity of the facts has to be evaluated against the gravity of the consequence of losing one's nationality, certainly in cases where this may lead to statelessness:

> Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality.[195]

In light of Article 15 of the Universal Declaration of Human Rights, Recommendation 99(18) of the Council of Europe, the considerations of the CJEU in *Rottmann* and of the practices in the Contracting States to the 1961 Convention, the application of this proportionality principle should have following consequences:

1. No deprivation should take place in case of minor delicts respectively fraud on only minor points.
2. Consideration should be given to the person's situation, culpability of the act, and the circumstances in which the fraud is committed (so expressly FIN 33).
3. There must be a causality between the fraud and the grant of nationality. In other words, the fraud must be decisive for the acquisition of nationality; no deprivation should take place if revelation of the true facts would not have affected the grant of naturalisation.
4. The requirement of a genuine and effective link between the target person and the respective state implies an important limitation to the automatic application by states of a revocation of nationality as a result of fraud. Whenever the target person has developed a genuine and effective link with the state in question, this implies that a limitation period has to be taken into consideration. Regrettably, only a minority of States use such a time limit; moreover, these time limitations vary greatly, from 1 or 2 years (FRA) to 15 years (SPA). Attention for the existing ties between the person involved and the country is expressly required under FIN 33.
5. Closely related to the previous point is the lapse of time since the fraud was committed, because the lapse of time is also relevant for assessing whether the gravity of the fraud justifies deprivation. When a

[194] Case C-135/08 *Rottmann* [2010] ECR I-01449. See also G.-R. de Groot and A. Seling, "The Consequences of the *Rottmann* Judgment on Member State Autonomy - The ECJ's Avant-Gardism in Nationality Matters", *European Constitutional Law Review* 7 (2011), 150-160; J. Shaw (ed.), "Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?", RSCAS Working Paper 2011/62 (2011); O. Vonk, *Dual Nationality in the European Union. A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States*, PhD diss. European University Institute (Leiden/Boston: Martinus Nijhoff Publishers, 2012), 105ff.
[195] *Rottmann*, consideration 56.

very long period of time has passed since the fraud, only very grave delicts can justify a deprivation of nationality (compare NET 14(1)).

6. Attention should be paid to the consequences of the loss of nationality for the person involved, in particular the possible loss of the right to reside in the country.
7. Consideration needs to be given to the consequences of the loss of nationality for family members of the person involved, in particular to whether or not they would possibly lose their right of residence in the country.
8. Of particular relevance is also whether or not someone is rendered stateless. Where statelessness may possibly be caused as a consequence of the deprivation, it could under certain circumstances be appropriate to postpone the act of deprivation until the person involved has clarified his nationality position after the deprivation – in particular whether or not a previous nationality can be recovered.

The second reason why the abovementioned Dutch practice is problematic it that a procedure by which the withdrawal of naturalization can lead to statelessness is in clear violation of Article 8(4) of the 1961 Convention. An administrative procedure annex hearing with the Immigration and Naturalization Department will definitely not suffice. Holding the view that Article 8(4) has direct effect, we feel that in cases where the withdrawal of naturalization results in statelessness a Dutch court will have to conclude that the person concerned still holds Dutch nationality until all domestic remedies have been exhausted. This conclusion should stand for as long as the Dutch court has not ruled that the government rightly decided to withdraw a naturalization decision. While it is unfortunate that one cannot complain about the incorrect interpretation of the 1961 Convention to an international court, we stress that the recent ruling of the ECtHR in *Genovese v. Malta* opens up new perspectives in the context of the ECHR.[196] After all, is the message conveyed by Article 8(4) of the 1961 Convention not the same as Article 6 and 13 ECHR? We therefore emphasize that, in light of Article 6 and 13 ECHR, the right to a fair hearing by an independent body should not be limited to cases that could lead to statelessness, but to all cases in which persons are deprived of their nationality.

4.14 Persons whose descent from a citizen is annulled or who are adopted by a citizen of another country

Focus: Does the country permit loss or withdrawal of citizenship for persons whose descent from a citizen is annulled or who are adopted by a citizen of another country if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, Article 5(1)

In some countries, we can find provisions of loss of citizenship due to adoption. An important distinction has to be made between full and weak adoption. The difference between the two is that full adoption (*adoption plénière*) has as a consequence that the legal relationships with the (natural) parents are dissolved and new legal relationships between the child and the adoptive parents are created. Full adoption can therefore be regarded as a special case of loss of family relationship.

[196] G.-R. de Groot and O. Vonk, "Nationality, Statelessness and ECHR's Article 8: Comments on Genovese v. Malta".

Weak adoption (*adoption simple*) does not dissolve the legal relationship with the (natural) parents. In case of weak adoption this original family relationship is maintained (the family relationship with the adoption parents is additional). Consequently, weak adoption should never cause the loss of nationality.

In case of full adoption a small minority of States provide – under certain conditions – for such loss (see Belgium (22(1)(4)), Germany (27), Lithuania (7(7) and 24(8)), Netherlands (16(1)(a)), and Switzerland (8a)). Many other States choose a different approach because of the fact that the loss of the family relationship in case of adoption is a mere legal fiction, and not the legal affirmation of a fact as is the case with a denial of paternity or an annulment of recognition of paternity. These States do not provide for loss of nationality after adoption.

The relevant international norms relating to persons whose descent from a citizen is annulled or who are adopted by a citizen of another country can be found in the 1961 Convention (CRS 5(1)), which provides that the loss of citizenship as a consequence of legitimation, recognition or adoption shall be conditional upon possession or acquisition of another citizenship. The European Convention in turn provides for the following grounds for loss, but only if it does not render the (minor) child stateless (ECN 7(3)):

> A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases (ECN 7(1)):
>
> …
>
> f. where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;
>
> g. adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.

The principle that adoption cannot lead to statelessness goes as far back as the 1930 Hague Convention on Nationality (Article 17):

> If the law of a State recognises that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national relating to the effect of adoption upon nationality.

Reference has to be made as well to the 1967 European Convention on the Adoption of Children (Article 11(2)):

> A loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.[197]

It should also be mentioned that the 1961 Convention includes an obligation to avoid statelessness as a consequence of other changes in personal status. In other words, the Convention of 1961 does not contain an exhaustive list of personal status-related facts which

[197] See a similar provision in the 2008 European Convention on the Adoption of Children (revised), Article 12(2).

should not cause statelessness, but enshrines an open-ended category. No change of personal status should therefore cause statelessness.

That changes to one's personal status may cause loss of nationality was already seen above in respect of recognition, legitimation and adoption. Given that nationality is often automatically acquired by descent if one of the parents is a citizen, it is not surprising that when it becomes clear that the assumed family relationship never existed (for example by a judicial confirmation following a denial of paternity) the claim to nationality is also undermined. Many legal systems provide in such cases for loss of nationality that was acquired on the basis of descent. Article 5(1) of the 1961 Convention accepts loss of nationality under these circumstances, but not if statelessness would be the result. The ECN (Articles 7(1)(f) and 7(1)(g)) goes a further step and provides that the loss of the family relationship may cause the loss of nationality, but only during minority and provided that this does not lead to statelessness.

It needs to be clarified, of course, which types of situations are covered by the phrase "any change in the personal status of a person". The successful denial of paternity as just mentioned is the most common example. Other examples are – provided that a legal system allows for such possibilities – a denial of maternity, annulment or revocation of a recognition or of an adoption. It is important to emphasize that this list is not exhaustive.

It is also appropriate to stress that it does not matter whether a legal system provides for a retroactive effect of the just-mentioned types of change in personal status. In all cases the protective regime against statelessness as foreseen in Article 5(1) of the 1961 Convention applies. Another approach would make it too easy for States to avoid obligations under Article 5(1).

Of the Contracting States to the 1961 Convention only a minority of states regulate this ground for loss expressly.[198] When comparing regulations across countries, we can distinguish between three main procedural approaches. Some countries have a rule that when it is established that the preconditions laid down by internal law which led to the *ex lege* acquisition of citizenship are no longer fulfilled, the person involved is automatically assumed to have lost his or her citizenship. Other states even go a step further in such cases by providing that the person is assumed never to have been a citizen at all. Finally, a small minority of countries provide for a possibility of withdrawal of citizenship. As already mentioned above, however, these differences in respect to the juridical-technical construction of this ground of loss do not matter for the protection of Article 5(1). None of these constructions may cause statelessness. The 1961 Convention is clear on this matter. Nevertheless, we shall see that not all States provide in such cases for a clear safeguard against statelessness (this is the case e.g. in Belgium, Finland and Germany).

A further distinction between countries relates to the age limit. As stated above, the European Convention expressly limits this ground for loss to minors. In the Netherlands, until 2003, this provision was not restricted to cases where the family relationship ceased during the

[198] For more details on the international practice, see G.-R. de Groot, "Background Paper on Avoiding Statelessness caused by Loss or Deprivation of Nationality".

minority of the target person, which was obviously not in conformity with Article 7(f) ECN. Since 1 April 2003, with retroactive effect to 1 January 1985, loss of nationality based on the loss of the relevant family relationship, is restricted to minors. The age limit of 18 years is common in several other countries, except Finland, Germany and Italy.

In Germany, the successful denial of paternity has as a consequence that the child loses its legal links to this person with retroactivity from the day of its birth. Consequently, the person concerned loses German citizenship if he or she does not also derive this citizenship from the mother or acquired this *iure soli*. Since 2009, loss is only possible until the child reaches the age of five, except in those cases where recognition of paternity is annulled by a court on application by the authorities, and only in cases where this recognition happened for immigration law purposes (GER 17(3)). However, this annulment is not possible if family life ('sozial-familiäre Beziehung') exists between the father and the child.[199] The underlying rationale for restricting loss of nationality to cases where the annulment of the family relationship took place before the child had reached the age of five years is the assumption that after five years the child has built up a genuine link with the country of nationality. This fact justifies – in the best interest of the child – the continuation of the possession of the nationality involved.

A similar idea lies behind the rule of the principles 10 and 15 of Recommendation 2009/13 of the Committee of ministers of the Council of Europe, which recommend States not to provide for loss of nationality in cases of revocation or annulment of an adoption if statelessness would be caused or if the child has already habitual residence in the country of an adoptive parent whose nationality was acquired for a period of more than five years.

Some countries, in particular Finland and Norway, explicitly take into account additional considerations, such as the ties between the target person and the country involved (FIN 32), or the length of time that has elapsed between the presumed date of acquisition as well as whether the persons involved acted in good faith (NOR 6). In Norway, upon application, an administrative decision may be made to the effect that a decision on the nullification of the original acquisition shall have no significance. The person involved shall then be deemed as having been Norwegian from the date of the originally presumed acquisition of Norwegian citizenship.

States are encouraged to follow these practices and not to apply their rules on loss of nationality due to the loss of the family relationship which was the basis for the acquisition of nationality if the person involved has meanwhile developed close ties with the country involved or when a considerable length of time has elapsed since the presumed date of acquisition.

In countries that do not mention this ground for loss specifically in their citizenship act, it is not always clear whether this implies that no such ground for loss exists. An example was, until 2009, the legal situation in Germany. Loss of German citizenship as a consequence of a successful denial of paternity was not regulated in the Nationality Act, but was regarded the logical consequence of the application of the relevant provisions of the Civil Code. Another example from the recent past is Sweden, where only in 2006 an administrative court decided that a denial of paternity does not have nationality consequences.

[199] The 2009 age limitation arguably makes a related reservation by Germany to the European Convention redundant ("Germany declares that loss of nationality may also occur if, upon a person's coming of age, it is established that the requirements governing acquisition of German nationality were not met").

It also needs stressing, finally, that countries that do not expressly regulate this type of loss but nonetheless still revoke nationality are acting at odds with the requirement of the predictability of grounds for loss of nationality. This is highly problematic in light of the ban on arbitrary deprivation of nationality.[200]

Table 14. Persons whose descent from a citizen is annulled or who are adopted by a citizen of another country

country	*articles*	*procedure*	*conditions*
Austria	no provision	n.a.	n.a.
Belgium	8(4);	Lapse;	Person is a minor whose family relationship with a citizen is annulled;
	22(1)(4)	Lapse	Person is a minor who is adopted by citizen(s) of another country and acquires or already possesses citizenship of that country. Citizenship is not lost if one of the adoptive parents is a citizen, or if the parent married to the adoptive parent who is a citizen of another country, is a citizen. *Loss can result in statelessness.*
Bulgaria	no provision	n.a.	n.a.
Croatia	no provision	n.a.	n.a.
Cyprus	no provision	n.a.	n.a.
Czech Republic	no provision	n.a.	n.a.
Denmark	no provision	n.a.	n.a.
Estonia	no provision	n.a.	n.a.
Finland	32	Withdrawal	Person is a minor and paternity is annulled or considered annulled before the age of 5, or within 5 years of establishing paternity. Consideration of child's situation, in particular of his/her age and ties with the country. *Loss can result in statelessness.*
France	no provision	n.a.	n.a.
Germany	4(1), 17(3);	Nullification;	Person's family relationship with the father who is a citizen is annulled, unless the person is five years or older;
	27	Nullification	Person is adopted by a citizen of another country and acquires citizenship of that country, unless the adoptee retains a legal relation to his/her German parent.
Greece	20	Release	Person was adopted before majority by a citizen of another country and acquires citizenship of that country.
Hungary	no provision	n.a.	n.a.
Iceland	no provision	n.a.	n.a.

[200] See Article 15(2) of the Universal Declaration of Human Rights.

Ireland	no provision	n.a.	n.a.
Italy	3(3)	Withdrawal	Person has acquired citizenship by adoption, which is subsequently annulled as a result of his/her behaviour.
Latvia	no provision	n.a.	n.a.
Lithuania	7(7), 24(8)	Withdrawal	Person is adopted and has not, upon reaching the age of 21 years, renounced citizenship of another state.
Luxembourg	13(3)	Lapse	Person is a minor whose family relationship with a citizen ceases to be established.
Macedonia	20	Release	Person is a minor and is adopted by a citizen of another country. Consent is needed if the person is over the age of 15 years. *Loss can result in statelessness.*
Malta	no provision	n.a.	n.a.
Moldova	no provision	n.a.	n.a.
Montenegro	24(b)	Withdrawal	Person is a minor and no longer fulfills the criteria based on which he/she acquired citizenship (annulment of family relationship, or other).
Netherlands	14(4)	Lapse	Person is a minor and her/his family relationship with the parent who is a citizen is annulled and the other parent is not a citizen.
	16(1)(a)	Lapse	Person is a minor who is adopted by a citizen of another country.
Norway	6	Nullification	The maternity/paternity or adoption by citizen parents is annulled before the person reaches the age of 18 years. Consideration of person's situation, in particular of the length of time that has elapsed from the presumed date of acquisition to the time the real situation was ascertained, and whether the applicant and his /her parents acted in good faith.
Poland	no provision	n.a.	n.a.
Portugal	no provision	n.a.	n.a.
Romania	29;	Lapse;	Person is adopted as a minor by a citizen of another country and acquires citizenship of that country. Consent is required if the person is over the age of 14 years. If adoption is annuled during minority, citizenship is considered never to have been lost; If the person's adoption by a citizen is annulled during minority, the person is considered never to have acquired citizenship if he/she is resident abroad or leaves the country to reside abroad. *Loss can result in statelessness in case of adoption.*
	7(1)(2)	Lapse	
Serbia	no provision	n.a.	n.a.
Slovakia	5(3)	n.a.	The child of a national retains citizenship even if descent of the parent who is a national is annulled.
Slovenia	no provision	n.a.	n.a.

Spain	no provision	n.a.	n.a.
Sweden	no provision	n.a.	n.a.
Switzerland	8;	Lapse;	Person is a minor and the family relationship with the parent on whom his/her citizenship depends is annulled;
	8a	Lapse	Person is adopted by a citizen another country and acquires citizenship of that country, unless the biological parent is a citizen.
Turkey	no provision	n.a.	n.a.
United Kingdom	no provision	n.a.	n.a.

Since this mode of protection concerns children whose nationality position in relation to their parents can sometimes remain unclear even after reading a country's nationality act, we are slightly hesitant in presenting the following findings (see also the caveat we make under mode S17 *infra*). While annulment of paternity or adoption is an explicit ground for loss in Belgium, Finland, Germany, Greece, Italy, Lithuania, Luxembourg, Macedonia, Montenegro, the Netherlands, Norway, Romania and Switzerland,[201] this ground for loss may exist implicitly in several other countries as well. Our findings suggest, however, that this ground for loss can only – in violation of the international norms – render a person stateless in Belgium, Finland, Germany, Macedonia, and Romania. Moreover, we point out that the legislation of Macedonia and Romania merely refers to adoption as a ground for loss, while the other countries refer more generally to the annulment of the family relationship.

Finally, we ask attention for the fact that in many countries, children may be left stateless if the State of their presumed nationality concludes that they were never born as the child of a national because they were wrongly registered as such due to an administrative mistake or fraud. Does the protection of Article 5(1) also apply if it is discovered that the personal status was registered wrongly – for example when a person was registered as a child of a national and was therefore considered to have acquired the parent(s) nationality *iure sanguinis*? *Quid iuris* if after a considerable length of time the authorities discover that the person involved is not a child of this national? Is nationality lost in such cases, even if this would result in statelessness? The same question arises in respect to Article 7(1)(f) of the European Convention, which provides for the loss of nationality in cases of non-fulfilment of the preconditions necessary for the *ex lege* acquisition of the nationality by the child while he or she was a minor.

The Explanatory Memorandum on Recommendation 2009/ 13 comments on this issue in the following way:

> It has to be stressed that Article 7, paragraph 1, *f* of the ECN also applies if it is established that, for instance, the family relationship which constituted the basis of the acquisition of the nationality of the child, was registered by mistake. The latter may be the case if, for example, the identity of the parent, which is relevant for the *jure sanguinis* acquisition of nationality, is discovered to be wrong, or in situations where it is discovered, after acquisition of the nationality by an *ex lege* extension of naturalisation, that no family relationship ever existed between the parent and the child (par 45).

[201] See modes L13a and L13b in the EUDO database on modes of loss.

However,

> this principle does not apply if treating the child as a national is based on fraudulent behaviour or fraudulent information provided about the child. Such is, for instance, the case if the full identity of the child, including existing family relationships, is not disclosed by her or his legal representative (par. 48).

Nevertheless, also in case of fraud committed by a legal representative a State should take into consideration that, in the best interest of the child, not all acts of an adult in respect of a child are attributable to the child. This is in particular not the case where the adult involved acted fraudulently by pretending to be the child's parent of the child. Consequently, in such cases the child should be deemed to be in good faith.

States are encouraged to follow this line of reasoning. Some States might do so through the protection of legitimate expectations; others via the protection of the status of a national. In Germany, for example, Article 3(2) GER would apply, which provides:

> German citizenship shall also be acquired by any person who has been treated by German public authorities as a German national for 12 years and this has been due to circumstances beyond his or her control. In particular, any person who has been issued a certificate of nationality, a passport or a national identity card shall be treated as a German national. Acquisition of citizenship shall apply as of the date when the person was deemed to have acquired German citizenship by treating him or her as a German national. The acquisition of German citizenship shall extend to those descendants who derive their status as Germans from the beneficiary pursuant to sentence 1.

In France, Article 21-13(1) FRA would be relevant in cases of wrong registration as a national. The Article literally reads "May claim French nationality by declaration uttered as provided for in Articles 26 and following, persons who have enjoyed in a constant way the apparent status of French for the ten years prior to the declaration".[202]

Yet other countries, like the Netherlands, do not have similar provisions in their nationality laws.[203] However, even in those countries, it may be the case that the nationality is not lost upon the discovery of a mistake or even fraud regarding the birth registration. Following the French tradition, several countries have a remedy of protection of the apparent status of parenthood (*possession d'état de filiation*) in their family law.[204]

[202] Lagarde mentions that good faith of the person involved is not a condition for the application of that rule. See P. Lagarde, *La nationalité française*, 3rd ed. (Paris: Dalloz, 1997), 116-118.

[203] In this context it should also be noted, that Advocate General Poiares Maduro underpinned in his opinion in the *Rottmann* that protection of legitimate expectations is a general principle of European law, which should be observed by the nationality law of the Member States of the European Union. See G.-R. de Groot and A. Seling, "The Consequences of the *Rottmann* Judgment on Member State Autonomy - The ECJ's Avant-Gardism in Nationality Matters".

[204] K.J. Saarloos, *European private international law on legal parentage? Thoughts on a European instrument implementing the principle of mutual recognition in legal parentage*, Dissertatie Universiteit Maastricht (Maastricht: Océ Business Services, 2010), 52-57. See Article 311-1 ff. French Code civil.

4.15 Persons who change their civil status due to marriage with a citizen of another country or dissolution of a marriage with a person holding the same citizenship

Focus: Does the country permit the loss or withdrawal of citizenship for persons who change their civil status due to marriage with a citizen of another country or dissolution of a marriage with a person holding the same citizenship if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 5(1)*;

1979 Convention on the Elimination of All Forms of Discrimination against Women, *Article 9(1)*;

1997 European Convention on Nationality, Article 4(d);

1966 International Covenant on Civil and Political Rights, *Article 23(4)*

Although this ground for loss does no longer exist in Europe, it is worth making some historical remarks on the relationship between marriage and nationality law. In the past almost all nationality acts applied the so-called unitary system of nationality within a family. A foreign woman generally acquired the nationality of her husband by marriage. Furthermore, by marrying a foreigner a woman lost her original nationality. As a result, man and wife possessed one and the same nationality, which was, in *ius sanguinis* countries, also transferred to their children. If a man acquired another nationality during the marriage and therefore lost his original nationality, his wife (and in most cases their children) also followed this new nationality status. A huge disadvantage of this system was that in most countries women also used to lose their nationality if they married a stateless person or if their husband became stateless during the marriage.

In order to avoid this disadvantage, some States provided that women only lost their nationality if they acquired the nationality of their husband. This policy was encouraged by the 1930 Hague Convention on Nationality, which provided that women would not lose their nationality by or during the marriage if they did not acquire the nationality of their husband by the marriage or if they could not acquire this nationality at the moment of marriage (Article 8). This provision was *inter alia* a reaction to the growing phenomenon of statelessness after the revolutions of 1918.

Already during the 1920s some countries had taken an additional step by providing that marriage did not have an effect on the nationality of women. This was also an important aim of the Convention of Montevideo of 1933. An important development was the 1957 Convention on the Nationality of Married Women, initiated by the United Nations. This was the first worldwide convention that wanted to create a completely independent nationality status for married women (a so-called dualist system). Gradually most countries granted such an independent nationality status to married women and, finally, also the possibility to transmit their nationality under the same conditions as men to their children.

A consequence of these developments is that in most countries provisions dealing with the citizenship status of married women are lacking, because these consequences of a marriage do no longer exist today. This equal treatment is in line with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 9). The European Convention on Nationality also provides that neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one

of the spouses during marriage, shall automatically affect the nationality of the other spouse (ECN 4(d)).

It is remarkable that Article 5(1) of the 1961 Convention does not in all cases forbid the loss of nationality by women as a consequence of a marriage or the termination of a marriage.[205] It only provides that this loss may not cause statelessness. Article 8 of the 1930 Convention imposes a stricter obligation by providing that loss of nationality by marriage is forbidden if the wife does not acquire her husband's nationality by the marriage and is also not able to acquire his nationality at marriage. We can also observe a remarkable tension on this point between the 1961 Convention and the 1957 Convention, although both were prepared in the late 1950s.

Needless to say, the provision of Article 5(1) is now – insofar as married women are concerned – completely superseded by Article 9(1) CEDAW which forbids a marriage to have any automatic effect on the nationality of women. Marriage and termination of marriage should never have *ex lege* nationality consequences and should therefore never cause statelessness.

Some separate words are also in order regarding the relationship between gender equality in nationality and legitimation or recognition of paternity. Under the old unitary system, children used to acquire the nationality of their father. Only in the exceptional case that a child legally did not have a father would (s)he acquire the nationality of the mother. Countries applying this approach used to provide that children would lose the maternal nationality if they would be recognised or legitimated by a foreigner. This could cause statelessness if the child did not acquire the nationality of the father. Article 16 of the 1930 Hague Convention therefore prescribed that a child should only lose the maternal nationality if (s)he acquired the nationality of the father who recognised or legitimatised the child. Article 5(1) of the 1961 Convention does not go that far, but imposes a more limited obligation on the Contracting States. The child should not lose the maternal nationality if statelessness would be caused.

Table 15. Persons who change their civil status due to marriage with a citizen of another country or dissolution of a marriage with a person holding the same citizenship.

No relevant provisions in any legislation in the 36 European States covered in this report: all States in line with international standards.

After the introduction of equal treatment of men and women in respect of the transmission of their nationality to their children – as prescribed by Article 9(2) CEDAW – only few States still provide that in exceptional cases a nationality may be lost in case of recognition or legitimation by a foreigner. This is the case, for example, in the Netherlands (NET 16(1)(a)). However, due to the fact that no loss takes place if the other parent still possesses Netherlands nationality, or died before as a Netherlands national, this ground for loss can only operate under extremely rare conditions. In light of the just-described developments, States are

[205] Annulment of a marriage should also be considered as termination of the marriage in spite of the fact that most legal systems provide that an annulment terminates the marriage with retroactivity and therefore conclude mostly that the "spouses" are deemed never to have been married with each other.

encouraged not to provide for loss of their nationality in case of the legitimation or recognition of a national by a foreigner.

4.16 Persons whose spouse or registered partner loses citizenship of a country

Focus: Does the country permit the loss or withdrawal of citizenship for persons whose spouse or registered partner loses citizenship of the country if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 6*;

1979 Convention on the Elimination of All Forms of Discrimination against Women, *Article 9(1)*

The relevant provision under the European Convention is Article 4(d), which reads that 'neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse'. The 1961 Convention in turn provides that the loss of citizenship by a person as a consequence of the loss or deprivation of citizenship of his/her spouse or registered partner shall be conditional upon the person possessing or acquiring another citizenship (CRS 6). These principles are complemented by the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which states that a country shall grant women equal rights with men to acquire, change or retain their citizenship. A country shall therefore ensure that change of citizenship by the husband during marriage shall not automatically change the citizenship of the wife, render her stateless or force upon her the citizenship of the husband (CEDAW 9(1)).

Article 9 of the 1930 Hague Convention already provided that married women should only lose their nationality due to a change or loss of nationality by their husband if they shared in the acquisition of their husband's new nationality. The 1933 Convention of Montevideo took a more radical step by prescribing that the change or loss of nationality of a spouse would not influence the nationality position of the other spouse. The Montevideo rule would finally also be enshrined in Article 9(1) CEDAW. It must be noted that the line followed by Article 6 of the 1961 Convention is very modest in comparison with the 1930 Convention. By only prescribing that the loss of nationality by a spouse as a consequence of the loss of nationality by the other spouse "shall be conditional upon their possession or acquisition of another nationality", the Article merely tries to prevent statelessness. In contrast, the 1930 Convention only allows loss by a spouse if the nationality of the husband is acquired.

It follows from the above that the rule of Article 6 in respect of the nationality position of spouses has been completely superseded by the just-mentioned Article 9(1) CEDAW. The loss of nationality by a spouse may not have any effect on the nationality of the other spouse.

Table 16. Persons whose spouse or registered partner loses citizenship of a country

(Table only includes States where there are relevant provisions)

country	*articles*	*procedure*	*conditions*
Bulgaria	23	Nullification	Person's spouse loses citizenship of the country because it was acquired in a fraudulent way, and the person has acquired citizenship based on same false or concealed information or facts. *Loss can result in statelessness.*
Turkey	32	Nullification	Person's spouse loses citizenship of the country because it was acquired in a fraudulent way, and the person has acquired citizenship based on same false or concealed information or facts. *Loss can result in statelessness.*

The only countries that violate international norms are Bulgaria and Turkey, where the nationality law provides that a person who has acquired citizenship of the countries based on the same false or concealed information or facts as the spouse, will share in the loss of citizenship if the spouse loses citizenship for this reason.

4.17 Children whose parents lose citizenship of a country

Focus: Does the country permit the loss or withdrawal of citizenship for persons whose parents lose the citizenship of the country if this can render them stateless?

Relevant international standards:

1961 Convention on the Reduction of Statelessness, *Article 6*;

1997 European Convention on Nationality, Article 7(2)

The final mode of protection against statelessness concerns children whose parents lose citizenship of a country. In a similar vein as mode S16, the 1961 Convention provides that the loss of citizenship by the child as a consequence of his/her parent losing or being deprived of citizenship shall be conditional upon the child's possession or acquisition of another citizenship (CRS 6). The European Convention is less strict by stating that Contracting States may provide for the loss of their citizenship by children whose parents lose that nationality, except in cases of voluntary service in a foreign military force or conduct seriously prejudicial to the vital interests of the country (ECN 7(2)).

The analysis and assessment of this last mode of protection against statelessness is by far the most difficult. This is because the Nationality Acts of the countries under discussion are often unclear about what happens with the nationality position of children upon the loss of nationality by their parents. For example, the only ground for loss that can lead to statelessness in the Netherlands is loss due to fraudulent acquisition (NET 14(1) in conjunction with 14(6)).

However, in fraud cases where the parents' loss of nationality might affect a child as well, the judge will take a separate decision on the nationality of the child. This decision can potentially result in the child becoming stateless, but this is not self-evident when reading the Dutch law.[206] As our analysis relies heavily on the rules explicitly laid down in the nationality legislation of the respective countries, we are hesitant to identify countries that violate the international norms on this issue. We will thus limit ourselves to pointing out that the following countries could possibly violate the strictest international norm as laid down in the 1961 Convention: Bulgaria, Croatia, the Czech Republic, Finland, Macedonia, the Netherlands, Poland, Romania, Slovenia, Switzerland, and Turkey. Of these countries only Croatia, the Czech Republic, Finland, Germany, the Netherlands, and Romania are in fact party to the Convention.

Countries that do not allow for the extension of loss from parents to their children are many, including Cyprus, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Malta, Moldova, Portugal, Spain and the UK. Irish law even explicitly states that the loss of Irish nationality by a person shall not of itself affect the nationality of her or his children (IRE 22(2)).

Table 17. Children whose parents lose citizenship of a country

country	*articles*	*procedure*	*conditions*
Austria	29	Lapse	Child loses citizenship because parent loses citizenship due to acquisition of another citizenship and the parent extends that acquisition to unmarried child (or: would extend that if the child would not already be citizen of that country). Exception: the other parent remains a citizen. If the child is born out of wedlock, citizenship is only lost if the child acquires citizenship of another country by law and his/her legal agent consents to the acquisition of that citizenship (in case the parent is male citizen: only if paternity has been established).
Belgium	22(1)(3), 22(1)(6), 22(3)	Lapse	Child loses citizenship because parent renounces citizenship, but the parent acquires citizenship of another country and extends that acquisition to the child (or: would extend that if the child is not already a citizen of that country). Exception: the other parent remains a citizen. Or: the parent who is the child's sole legal representative loses citizenship because of permanent residence abroad, unless the child would become stateless.
Bulgaria	21, 23	Ext of Release, Nullification	Child loses citizenship because parent renounces citizenship (if the child is 14 or older only extension of loss with his/her consent) or loses citizenship that was acquired in a fraudulent way and the child has acquired citizenship based on same false or concealed information or facts. *Loss can result in statelessness*.
Croatia	22(2), 20(2)	Extension of Declaration / Extension of Release	Child loses citizenship because parent renounces citizenship and the other parent is a citizen of another country. *Loss can result in statelessness.*
Cyprus	no prov.	n.a.	n.a.
Czech Republic	16	Extension of Declaration	Child loses citizenship because parent renounces citizenship and includes the child in the declaration of renunciation.

[206] See generally S. Sari, "Artikel 14(1) RwNED: Herroeping van het Nederlanderschap wegens bedrog én gevolgen voor de kinderen", *Migrantenrecht* 17 (2003), 325-332.

			Loss can result in statelessness.
Denmark	7(3), 8(2)	Lapse	Child loses citizenship because parent loses citizenship due to voluntary acquisition of the citizenship of another country or residence abroad. Exceptions: the other parent remains a citizen and has (shared) custody over the child (in case of acquisition of a foreign citizenship) or if the child would become stateless (in case of permanent residence abroad).
Estonia	no prov.	n.a.	n.a.
Finland	33(2), 33(3), 33(4)	Withdrawal	Child loses citizenship because parent acquired citizenship by declaration or naturalisation as a result of false or misleading information, or withholding relevant information, and has extended this fraudulent acquisition to the child. Exception: the other parent is a citizen. Consideration of the child's situation, culpability of the act, circumstances in which fraud is committed and his/her ties with the country as well as age. Withdrawal proceeding needs to start within five years following the acquisition of citizenship. *Loss can result in statelessness.*
France	no prov.	n.a.	n.a.
Germany	17(2)	Withdrawal	Child loses citizenship because parent loses citizenship due to fraudulent acquisition (unless the child is five years or older). *Loss can result in statelessness*.
Greece	no prov.	n.a.	n.a.
Hungary	no prov.	n.a.	n.a.
Iceland	12	Lapse	Child loses citizenship because parent loses citizenship due to residence abroad.
Ireland	no prov.	n.a.	n.a.
Italy	no prov.	n.a.	n.a.
Latvia	no prov.	n.a.	n.a.
Lithuania	28	Withdrawal	Both parents, who have acquired citizenship by naturalisation, lose citizenship. Person whose parents lose citizenship is under 18 years of age and he/she has acquired citizenship by means other than by birth (consent of person between 14 and 18 years of age is required).
Luxembourg	13(2)	Lapse	Child loses citizenship because parent renounces citizenship and has sole parental authority over the child. In case of shared custody, both parents need to renounce citizenship. Provision only applies if child has or acquires another citizenship.
Macedonia	19;	Extension of Release;	Child loses citizenship because both parents who have been released from citizenship request so, or one parent renounces citizenship and the other parent consents with the loss of citizenship by the child. If the parents live separately, citizenship is lost upon a request by the parent with whom the child lives and who has submitted the request for renunciation of the citizenship, or when the parent with whom the child lives is a foreigner. In both cases consent from the other parent is needed. The child's consent is needed if the child is over the age of 15 years.
	14	Nullification	Child loses citizenship because parent loses citizenship due to fraud in the naturalisation procedure. *Loss can result in statelessness*.
Malta	no prov.	n.a.	n.a.
Moldova	no prov.	n.a.	n.a.

Montenegro	24	Withdrawal	Child loses citizenship because parent loses citizenship and the other parent does not have citizenship of the country.
Netherlands	16(1)(c), 16(1)(d)	Lapse	Child loses citizenship due to voluntary acquisition of citizenship of another country by the parent, which is extended to the child (or: the child already has citizenship of this other country). Child loses citizenship when the parent voluntarily renounces or loses citizenship due to residence abroad or due to non-compliance with the requirements for naturalization. Exceptions: Other parent remains a citizen, or the child acquired citizenship by birth in the country, or the child is born in another country and resides there at the time of acquisition, or the child resided in another country uninterruptedly for 5 years. *Loss can result in statelessness*.
Norway	23	Lapse	Child loses citizenship because he/she automatically acquires foreign citizenship on the basis of one of the parents – who has custody – acquiring the citizenship of another country. Citizenship is not lost if the other parent, who shares custody, remains a citizen.
Poland	7, 8	Extension of Release	Child loses citizenship because parent renounces citizenship and includes the child in the declaration of renunciation. Consent needed from the age of 16 years. *Loss can result in statelessness*.
Portugal	no prov.	n.a.	n.a.
Romania	28(1), 28(2)	Extension of Release	Child loses citizenship because both parents renounce citizenship and live in another country together with the child. Consent is required if the child is over the age of 14 years. *Loss can result in statelessness.*
Serbia	30, 31	Release	Child loses citizenship because parent is released from citizenship and the child is included in the application for release. If only one parent has been released from citizenship, consent of the other parent is required. Consent is required if the child is over the age of 14 years. If parents are divorced, only a parent having full legal custody can submit the application.
Slovakia	9(2), 9(7)	Extension of Release	Child loses citizenship because parent renounces citizenship and includes the child, who is under 14 years, in the application for release. Loss is conditional on proof of acquisition of another citizenship or the promise to become a citizen of another country.
Slovenia	22, 23, 24,	Release;	Child of 18 years or older loses citizenship at the request of both parents when both parents renounced citizenship (or one parent in the case only one parent is a citizen). Consent is needed if the child is 14 years or older;
	16(3)	Nullification	Child loses citizenship because parent loses citizenship due to fraud in the naturalisation procedure or non-renunciation. *Loss can result in statelessness.*
Spain	no prov.	n.a.	n.a.
Sweden	14(3), 17	Lapse	Child loses citizenship acquired through the parent when this parent was born abroad and loses citizenship because he/she never resided in the country (or at least 7 years in the country or another Nordic state) and never stayed in the country under circumstances indicating a special tie to it. Exceptions: other parent remains a citizen and the child also acquired his/her citizenship from that parent.
Switzerland	41(3), 44	Nullification / Extension of Release	Child loses citizenship because parent acquired citizenship through fraud and child's citizenship is contingent on that acquisition, or the parent renounces citizenship, the child is in the custody of this parent, under the age of 16 years and assured of another citizenship.

			Child's consent is required over the age of 16 years. *Loss can result in statelessness.*
Turkey	27;	Lapse;	Child loses citizenship because both parents renounce citizenship or one parent renounces citizenship and the other parent consents with loss of citizenship by the child.
	32	Nullification	Parent loses citizenship that was acquired in a fraudulent way and the child has acquired citizenship based on same false or concealed information or facts. *Loss can result in statelessness*.
United Kingdom	no prov.	n.a.	n.a.

Whether a parent should have the power at all to determine directly or indirectly the nationality status of her/his children is a matter of debate that goes beyond the scope of this comparative report.[207] In many jurisdictions the power of parents to represent their minor children is restricted to specific cases, such as making a last will or the sale of immovable goods owned by the child. In nationality matters, parental representation may have far-reaching consequences; where this is regulated by law it should arguably be done within strict limitations. The loss of nationality by a parent without parental authority, for example, should not cause the loss of nationality of the child.

[207] See in more detail G.-R. de Groot and E. Vrinds, "The Position of Children in Respect of Decisions made by their Parents regarding their Nationality", Paper presented at the 3rd European Conference on Nationality, Council of Europe, Strasbourg, 11-12 October 2004.

Concluding remarks

Most countries in Europe seriously try to avoid cases of statelessness from arising and for good reasons. If citizenship is the 'right to have rights', statelessness is the other side of the coin. For a person not to be recognized by any State as a national under the operation of its law, following the definition of the 1961 Convention on the Reduction of Statelessness, this means lacking basic rights of residence security, social security, international travel, political participation and, in a broader sense, marginalization and enhanced risks at discrimination. The comparative findings presented in this report highlight that nationality law provisions which are relevant to groups at risk of being stateless to a large extent are in line with international standards. From this perspective, much progress has been made from a situation of only a few decades ago, when gender-based discrimination in nationality laws and lack of political priority for the issue of statelessness still left at-risk individuals, such as children born abroad, out of wedlock and/or of mixed nationality parentage, in a much more vulnerable situation.

This having been said, we still find significant variation in the extent to which States comply with international standards in their nationality legislation. From an overly legalistic perspective this may be caused by the fact that even though ratification rates of the crucial 1954 and 1961 Conventions have increased, they are far from complete (see Appendix 1). To highlight this compliance gap, we have opted to apply the standards of international conventions as a uniform benchmark, rather than applying each standard only to the respective State Party to which it applies formally. States who have not ratified either the 1954 Convention, the 1961 Convention or the 1997 European Convention on Nationality should be encourage to formally adhere to these instruments of international law, but not doing so – in our view – is no valid excuse for offering insufficient protection against statelessness.

In addition to non-ratification, however, we observe that the violations of international standards as described in this report are often caused by the fact that international obligations are not interpreted carefully enough by States in their nationality laws. Table 18 provides a summary assessment of relevant nationality law provisions across the 36 European countries included in this study.

Table 18. Assessment of national law in light of international standards

	Number of modes which fall in following assessment categories*:			
	More protection than required by standards	In line with standards	Limited safeguard against statelessness	No safeguard against statelessness
Montenegro	2	13	0	0
Serbia	2	13	0	0
Moldova	1	14	0	0
Slovakia	0	15	0	0
Hungary	0	14	1	0

Luxembourg	1	12	2	0
Norway	1	13	0	1
Portugal	0	14	1	0
Sweden	1	12	2	0
United Kingdom	1	12	2	0
Denmark	1	11	3	0
Poland	0	14	0	1
Spain	0	14	0	1
Belgium	1	12	0	2
Croatia	0	13	1	1
Czech Republic	0	13	1	1
Finland	1	12	0	2
Iceland	0	12	3	0
Macedonia	1	11	2	1
Switzerland	0	13	1	1
Bulgaria	0	13	0	2
Germany	1	11	1	2
Italy	0	13	0	2
Slovenia	1	11	1	2
France	0	12	1	2
Ireland	0	11	2	2
Latvia	0	11	2	2
Netherlands	0	10	4	1
Austria	0	9	4	2
Estonia	0	11	1	3
Malta	0	10	2	3
Lithuania	0	10	1	4
Romania	0	10	0	5
Turkey	1	8	1	5
Greece	0	9	1	5
Cyprus	0	8	2	5

* Assessment covers 15 modes of protection against statelessness, excluding S05 and S06

In line with the assessment categories of the Database, we distinguish for each mode whether national provisions either a) offer more protection than required by international standards; b) are in line with standards; c) provide only limited safeguards against statelessness; or d) provide no safeguard against statelessness.[208] This overview clearly supports three conclusions. First, most States comply with most international standards and in some cases

[208] These assessment categories cannot be applied to modes S05 and S06, where the international standards are insufficiently precise and only encourage states to facilitate the acquisition of citizenship for, respectively, recognized refugees and stateless persons or persons of unclear citizenship.

even offer more protection than is required by international law, though only four comply with all standards: Montenegro, Serbia, Moldova and Slovakia. Second, most States in Europe violate at least one, two or three standards and sometimes offer limited safeguards to additional at-risk groups. Third, a minority of States violates four or five international standards and, in some cases, offers limited safeguards to one or two additional at-risk groups: Lithuania, Romania, Turkey, Greece and Cyprus.

Some caveats are important, however. First, in this report (and also in the Database) we leave aside one of major causes of statelessness: state succession. After all, statelessness does not only occur because of discrimination or because of conflicts of laws between states, but also because of failure to include all residents in the body of citizens when a State becomes independent. While not denying its crucial importance we have left the issue of state succession outside of the scope of this comparative exercise because by its very nature this problem will not be immediately apparent from a study of nationality laws. In fact, due to the often historically contingent issue of statelessness as a result of state succession, e.g. in the Baltics or in the Balkans, we encounter here the limits of our comparative typology. This means that findings from our normative assessment should be interpreted as having meaning only in a context where no issues of statelessness due to state succession arise. In other words, this means that in those situations in Europe where it is well-known that state succession has caused problems related to statelessness, readers of this report are encouraged to further explore the relevance of this issue.[209]

Second, the analysis in this report only pertains to formal nationality law rules and does not assess practical implementation of these rules. The case of Serbia can serve as an example. Its excellent record based on the analysis of its nationality law at first sight suggests that statelessness is not a problem in the country. But Serbia's good score should not be interpreted to mean that protection against statelessness is always guaranteed in practice or that stateless persons' human rights are always fully safeguarded. Praxis, a Serbia-based NGO, for example recently identified

> the difficulties one can encounter when registering residence in his/her own country [i.e. Serbia] and the way in which the absence of registered permanent residence can deprive Serbian nationals of the rights normally attached to nationality or of the possibility to transfer the nationality to their children. Such consequences almost exclusively arise in cases of Roma from informal settlements, who cannot document ownership or any other legal basis of housing, as well as in cases of citizens of Serbia originating from Kosovo, with habitual residence in Serbia.
>
> (…)
>
> The national legislation recognizes permanent residence as a place where rights can be enjoyed. As a result, a person may be born in Serbia, have its citizenship and spend all his/her life in one place in its territory, but if the person concerned does not have permanent residence registered, most institutions will remain inaccessible to him/her. That person will not be able to obtain ID card or passport, leave the country or access basic human rights. [210]

Praxis also concludes that 'the system of residence registration may cause risk of statelessness among children'.[211]

[209] See, for example, the countries studies available on http://www.eudo-citizenship.eu/country-profiles.
[210] See http://www.statelessness.eu/blog/no-residence-no-rights
[211] Ibid.

In short, these observations may serve as a warning that the analysis of nationality law provisions only provides part of the picture where protection against statelessness is concerned. This comparative report has aimed to chart the extent to which States in Europe in their nationality legislation provide protection against statelessness for a comprehensive number of at-risk groups. An important agenda for future research is thus precisely to map how these rules translate in practice. Nationality legislation that offers sufficient protection against statelessness, in line with international standards, is a necessary, but by no means sufficient condition for protection against statelessness.

Bibliography

Batchelor, Carol A. "The 1954 Convention Relating to the Status of Stateless Persons: Implementation Within the European Union Member States and Recommendations for Harmonization". *Refuge* 22, no. 2 (2005): 31-58.

Berkeley, B. "Stateless people, violent states". *World Policy Journal* 26, no. 1 (2009): 6-8.

Blitz, Brad K. "Statelessness, protection and equality". Refugee Studies Centre, Forced Migration Policy Briefing no. 3, 2009. http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:5157.

Blitz, Brad K., and Amal de Chickera. "Editorial". *European Journal of Migration and Law* 14, no. 3 (2012): 239-242.

Blitz, Brad K., and Maureen Lynch Lynch. "Statelessness and the benefits of citizenship: A comparative study". Geneva Academy of International Humanitarian Law and Human Rights/International Observatory on Statelessness, 2009. http://www.udhr60.ch/report/statelessness_paper0609.pdf.

Boeles, Pieter. "Het nut van nationaliteit". Afscheidscollege als hoogleraar immigratierecht (Leiden, 29 juni 2007). http://media.leidenuniv.nl/legacy/Het_nut_van_nationaliteit%5B1%5D.pdf.

Busser, A., and Peter R. Rodrigues. "Staatloze Roma in Nederland". *Asiel- en Migrantenrecht*, no. 8 (2010): 384-390.

Cahn, Claude. "Minorities, Citizenship and Statelessness in Europe". *European Journal of Migration and Law* 14, no. 3 (2012): 297-316.

Campbell, John R. "The Enduring Problem of Statelessness in the Horn of Africa: How Nation-States and Western Courts (Re)Define Nationality". *International Journal of Refugee Law* 23, no. 4 (2011): 656-679.

de Chickera, Amal. "The Human Rights of Stateless Persons in Europe – Interview with Commissioner Thomas Hammarberg". *European Journal of Migration and Law* 14, no. 3 (2012).

de Groot, Gerard-René. "Weer verder op weg naar een vernieuwd Nederlands nationaliteitsrecht". *Migrantenrecht* 9, no. 10 (1994): 209-216.

———. "A clarification of the fundamental rights implications of stateless and persons erased from the register of residents". Briefing paper European Parliament, 2007. http://www.libertysecurity.org/IMG/pdf_clarification_of_FR_implications_en.pdf.

———. *Background Paper Preventing Statelessness among Children: Interpreting Articles 1-4 of the 1961 Convention on the Reduction of Statelessness and Relevant International Human Rights Norms*. Geneva: UNHCR, 2012.

———. "Equality of Women and Men in Nationality Law". In *The Women's Convention Turned 30: Achievements, Setbacks, and Prospects*, edited by Ingrid Westendorp. 185-200. Cambridge-Antwerp-Portland: Intersentia, 2012.

———. "Nationaliteitsrecht". In *Personen- en familierecht (looseleafe edition)*. Deventer: Kluwer, 2012.

———. "Staatloze kinderen: internationale standaards over hun recht op een nationaliteit". In *Het kind in het immigratierecht*, edited by G.G. Lodder and P.R Rodrigues. 115-126. Den Haag: Sdu uitgevers, 2012.

———. "Background Paper on Avoiding Statelessness caused by Loss or Deprivation of Nationality: Interpreting Articles 5-9 of the 1961 Convention on the Reduction of Statelessness and Relevant International Human Rights Norms". Geneva: UNHCR, forthcoming.

———. "Strengthening the Position of Children: Council of Europe's Recommendation 2009/13". Concepts of Nationality in a Globalised World, forthcoming.

de Groot, Gerard-René, and Anja Seling. "The Consequences of the *Rottmann* Judgment on Member State Autonomy - The ECJ's Avant-Gardism in Nationality Matters". *European Constitutional Law Review* 7 (2011): 150-160.

de Groot, Gerard-René, and Maarten P. Vink. "Loss of Citizenship: Trends and Regulations in Europe". EUDO Citizenship Comparative Report, 1-53, 2010. http://eudo-citizenship.eu/docs/loss_paper_updated_14102010.pdf.

de Groot, Gerard-René, and Olivier Vonk. "Genovese tegen Malta: niet discrimineren bij toekennen nationaliteit". *Asiel- en Migrantenrecht* 3, no. 3 (2012): 136-140.

———. "Nationality, Statelessness and ECHR's Article 8: Comments on Genovese v. Malta". *European Journal of Migration and Law* 14, no. 3 (2012): 317-325.

———. "Scrutinising Citizenship Decisions: Analysing Judicial Review in Europe". EUDO Citizenship Comparative Analysis, forthcoming.

de Groot, Gerard-René, and Erik Vrinds. "The Position of Children in Respect of Decisions made by their Parents regarding their Nationality". Paper presented at the 3rd European Conference on Nationality, Council of Europe, Strasbourg, 11-12 October 2004. http://www.coe.int/t/dghl/standardsetting/nationality/3_WEB%20E%20Rep.%208.pdf .

Doek, Jaap. "The CRC and the Right to Acquire and to Preserve a Nationality". *Refugee Survey Quarterly* (2006): 26-32.

Equal Rights Trust. "Unraveling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons". 2010. http://www.equalrightstrust.org/news19july2010/index.htm.

———. "Guidelines to Protect Stateless Persons from Arbitrary Detention: Introduction". *European Journal of Migration and Law* 14, no. 3 (2012).

Frelick, Bill, and Maureen Lynch. "Statelessness: a forgotten human rights crisis". *Forced Migration Review* 24 (2005): 66.

Gerber, Paula, Andy Gargett, and Melissa Castan. "Does the right to birth registration include a right to a birth certificate?". *Netherlands Quarterly of Human Rights* 29, no. 4 (2011): 434-459.

Goodwin-Gill, Guy S. "Introduction to the Convention relating to the Status of Stateless Persons". United Nations Audiovisual Library of International Law Convention relating to the status of stateless persons. http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp_e.pdf.

Gregg, Lucy, Chris Nash, and Nick Oakeshott. "Mapping Statelessness in The United Kingdom". UNHCR report, 1-164, 2011. http://www.unhcr.org.uk/fileadmin/user_upload/images/Updates/November_2011/UNHCR-Statelessness_in_UK-ENG-screen.pdf.

Gyulai, Gábor. "Statelessness in the EU Framework for International Protection". *European Journal of Migration and Law* 14, no. 3 (2012): 279-295.

Harrington Reddy, Julia. "Mauritania: citizenship lost and found". In *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, edited by Brad K. Blitz and Maureen Lynch. 142-159. Cheltenham: Edward Elgar, 2011.

Korir Sing'Oei, Abraham. "Citizenship in Kenya: the Nubian case". In *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, edited by Brad K. Blitz and Maureen Lynch. 45-65. Cheltenham: Edward Elgar, 2011.

Lagarde, Paul. *La nationalité française*. 3rd ed. Paris: Dalloz, 1997.

Manby, Bronwen. *Struggles for Citizenship in Africa*. London: Zed Books, 2009.

Manly, Mark. "UNHCR's Mandate and Activities to Address Statelessness in Europe". *European Journal of Migration and Law* 14, no. 3 (2012): 261-277.

Manly, Mark, and Santhosh Persaud. "UNHCR and responses to statelessness". *Forced Migration Review*, no. 32 (2009): 7-10.

Massey, Hugh. "UNHCR and De Facto Statelessness". UNHCR Legal and Protection Policy Research Series. Geneva: UNHCR, 2010. http://www.unhcr.org/4bc2ddeb9.pdf.

Nowak, Manfred. *U.N. Covenant on Civil and Political Rights, ICCPR Commentary*. 2nd ed. Kehl: N.P. Engel, 2006.

Open Society Justice Initiative. "Human Rights and Legal Identity: Approaches to Combating Statelessness and Arbitrary Deprivation of Nationality". Thematic Conference Paper, May 2006. http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/publications/identity_20060501.

Parra, Jessica. "Stateless Roma in the European Union: Reconciling the Doctrine of Sovereignty Concerning Nationality Laws with International Agreements to Reduce and Avoid Statelessness". *Fordham International Law Journal* 34, no. 6 (2011): 1666-1694.

Pilgram, Lisa. "International Law and European Nationality Laws". EUDO Citizenship Comparative Report, 1-25, 2011. http://eudo-citizenship.eu/docs/Pilgram.pdf.

Rustom, Carine, and Quentin Schoonvaere. "Mapping Statelessness in Belgium". UNHCR report, 2013. http://www.unhcr.org/refworld/docid/5100f4b22.html.

Saarloos, Kees Jan. *European private international law on legal parentage? Thoughts on a European instrument implementing the principle of mutual recognition in legal parentage*. Dissertatie Universiteit Maastricht. Maastricht: Océ Business Services, 2010.

Sari, S. "Artikel 14(1) RwNED: Herroeping van het Nederlanderschap wegens bedrog én gevolgen voor de kinderen". *Migrantenrecht* 17 (2003): 325-332.

Shaw, Jo (ed.) "Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?". RSCAS Working Paper 2011/62, 1-42, 2011. http://eudo-citizenship.eu/docs/RSCAS_2011_62.pdf.

Shiblak, Abbas. "Arabia's Bidoon". In *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, edited by Brad K. Blitz and Maureen Lynch. 172-193. Cheltenham: Edward Elgar, 2011.

Southwick, Katherine , and Maureen Lynch Lynch. "Nationality Rights for All: A Progress Report and Global Survey on Statelessness". 2009. http://www.crin.org/docs/RI_Stateless_Report_FINAL_031109.pdf.

Stiller, Martin. *Eine Völkerrechtsgeschichte der Staatenlosigkeit*. Wien: Springer, 2011.

UNHCR. "Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, No. 106 (LVII) - 2006". http://www.unhcr.org/refworld/docid/453497302.html.

———. "Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)". 1997. http://www.unhcr.org/3d4ab5fb9.html.

———. "Nationality and Statelessness: A Handbook for parliamentarians". 2008. http://www.unhcr.org/refworld/docid/436608b24.html.

———. "Action to Address Statelessness: A Strategy Note". 2010. http://www.unhcr.org/4b960ae99.html.

———. "Background Note on Gender Equality, Nationality Laws and Statelessness". 2012. http://www.unhcr.org/4f5886306.html.

———. "Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons". 2012. http://www.unhcr.org/refworld/pdfid/4f4371b82.pdf.

———. "Guidelines on Statelessness No. 2: Procedures fo Determining whether an Individual is a Stateless Person". 2012. http://www.unhcr.org/refworld/pdfid/4f7dafb52.pdf.

———. "Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level". 2012. http://www.unhcr.org/refworld/docid/5005520f2.html.

———. "Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness". 2012. http://www.unhcr.org/refworld/docid/5005520f2.html.

———. "UNHCR Handbook for the Protection of Women and Girls". January 2008. http://www.unhcr.org/protect/PROTECTION/47cfae612.html.

van Waas, Laura. "The children of irregular migrants: a stateless generation?". *Netherlands Quarterly of Human Rights* 25, no. 3 (2007): 437-458.

———. *Nationality Matters. Statelessness under international law*. Antwerp: Intersentia, 2008. http://arno.uvt.nl/show.cgi?fid=113179.

———. "Statelessness: A 21st century challenge for Europe". *Security and Human Rights*, no. 2 (2009): 133-146.

———. "Nationality and rights". In *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, edited by Brad K. Blitz and Maureen Lynch. 23-44. Cheltenham: Edward Elgar, 2011.

———. "Fighting Statelessness and Discriminatory Nationality Laws in Europe". *European Journal of Migration and Law* 14, no. 3 (2012): 243-260.

Vetik, Raivo. "The statelessness issue in Estonia". In *Statelessness in the European Union. Displaced, Undocumented, Unwanted*, edited by Caroline Sawyer and Brad K. Blitz. 230-252. Cambridge: Cambridge University Press, 2011.

———. "Statelessness, citizenship and belonging in Estonia". In *Statelessness and Citizenship. A comparative Study on the Benefits of Nationality*, edited by Brad K. Blitz and Maureen Lynch. 160-171. Cheltenham: Edward Elgar, 2011.

Vink, Maarten P., and Gerard-René de Groot. "Birthright Citizenship: Trends and Regulations in Europe". EUDO Citizenship Comparative Report, 1-36, 2010. http://eudo-citizenship.eu/docs/birthright_comparativepaper.pdf.

Vonk, Olivier. *Dual Nationality in the European Union. A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States*. PhD diss. European University Institute. Leiden/Boston: Martinus Nijhoff Publishers, 2012.

Vonk, Olivier, and Karel Hendriks. "Mapping statelessness in the Netherlands". UNHCR report, 2011. http://www.unhcr.org/refworld/pdfid/4eef65da2.pdf.

Weis, Paul. *Nationality and statelessness in international law*. 2nd revised ed. Alphen aan den Rijn: Sijthoff & Noordhoff, 1979.

Ziemele, Ineta. *A Commentary on the United Nations Convention on the Rights of the Child, Article 7: The Right to Birth Registration, Name and Nationality, and the Right to Know and be Cared for by Parents*. Leiden/Boston: Martinus Nijhoff Publishers, 2007.

Appendix 1. Ratification international instruments on statelessness by the 36 European States of this study

	1954 Convention Relating to the Status of Stateless Persons			1961 Convention on the Reduction of Statelessness				1997 European Convention on Nationality		
State	**Signature**	**Ratification, accession (a), succession (d)**	**Declarations and reservations**	**Signature**	**Ratification, accession (a), succession (d)**		**Declarations and reservations**	**Signature**	**Ratification**	**Reservations**
AUT		2-8-2008	a		22-9-1972	a	x	6-11-1997	17-9-1998	x
BEL	28-9-1954	27-5-1960			n.a.					
BUL		22-3-2012	a		22-3-2012	a		15-1-1998	2-2-2006	
CRO		10-12-1992	d		22-9-2011	a		19-1-2005	n.a.	
CYP		n.a.			n.a.					
CZE		19-7-2004	a		19-12-2001	a		7-5-1999	19-3-2004	
DEN	28-9-1954	17-1-1956			11-7-1977	a		6-11-1997	24-7-2002	
EST		n.a.			n.a.				n.a.	
FIN		10-10-1968	a		7-8-2008	a		6-11-1997	6-8-2008	
FRA	12-1-1955	8-3-1960		31-5-1962	n.a.			4-7-2000	n.a.	
GER	28-9-1954	26-10-1976			31-8-1977	a		4-2-2002	11-5-2005	
GRE		11-4-1975	a		n.a.			6-11-1997	n.a.	
HUN		21-11-2001	a		12-5-2009	a		6-11-1997	21-11-2001	
ICE		n.a.			n.a.			6-11-1997	26-3-2003	
IRE		17-12-1962	a		18-1-1973	a	x		n.a.	
ITA	20-10-1954	3-12-1962			n.a.			6-11-1997	n.a.	
LAT		11-5-1999	a		14-4-1992	a		30-5-2001	n.a.	
LIT		7-2-2000	a		n.a.				n.a.	

LUX	28-10-1955	27-6-1960			n.a.			26-5-2008	n.a.	
MAC		18-1-1994	d		n.a.			6-11-1997	3-6-2003	
MAL		n.a.			n.a.			29-10-2003	n.a.	
MOL		19-4-2012	a		19-4-2012	a		3-11-1998	30-11-1999	
MON		23-10-2006	d		n.a.			5-5-2010	22-6-2010	
NET	28-9-1954	12-4-1962		30-8-1961	13-5-1985			6-11-1997	21-3-2001	x
NOR	28-9-1954	19-11-1956			11-8-1971	a		6-1-1997	4-6-2009	
POL		n.a.			n.a.			29-4-1999	n.a.	
POR		n.a.			1-10-2012	a		6-11-1997	15-10-2001	
ROM		27-1-2006	a		27-1-2006	a		6-11-1997	20-1-2005	
SER		3-12-2001	d		7-12-2011	a			n.a.	
SLK		4-3-2000	a		3-4-2000	a		6-11-1997	27-5-1998	
SLN		7-6-1992	d		n.a.				n.a.	
SPA		5-12-1997	a		n.a.				n.a.	
SWE	28-9-1954	2-4-1965			19-2-1969	a		6-11-1997	28-6-2001	
SWI	28-9-1954	3-7-1972			n.a.				n.a.	
TUR		n.a.			n.a.				n.a.	
UK	28-9-1954	16-4-1959		30-8-1961	29-3-1966		x		n.a.	

Appendix 2. Relevant declarations by the 36 European states of this study concerning Article 8, Paragraph 3(A),(I) and (II) of the 1961 Convention on the Reduction of Statelessness[212]

Austria

"Austria declares to retain the right to deprive a person of his nationality, if such person enters, on his own free will, the military service of a foreign State.
"Austria declares to retain the right to deprive a person of his nationality, if such person being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or to the prestige of the Republic of Austria."

Ireland

"In accordance with paragraph 3 of article 8 of the Convention Ireland retains the right to deprive a naturalised Irish citizen of his citizenship pursuant to section 19(1)(b) of the Irish Nationality and Citizenship Act, 1956, on grounds specified in the aforesaid paragraph."

United Kingdom of Great Britain and Northern Ireland

"[The Government of the United Kingdom declares that], in accordance with paragraph 3(a) of Article 8 of the Convention, notwithstanding the provisions of paragraph 1 of Article 8, the United Kingdom retains the right to deprive a naturalised person of his nationality on the following grounds, being grounds existing in United Kingdom law at the present time: that, inconsistently with his duty of loyalty to Her Britannic Majesty, the person

"(i) Has, in disregard of an express prohibition of Her Britannic Majesty, rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

"(ii) Has conducted himself in a manner seriously prejudicial to the vital interests of Her Britannic Majesty."

[212] Source: http://www.unhcr.org/pages/4a2535c3d.html.

Appendix 3. Relevant reservations by the 36 European states of this study to the 1997 European Convention on Nationality[213]

Austria

Reservation contained in the instrument of ratification deposited on 17 September 1998

Period covered: 1/3/2000 –

Austria declares that the term "parents/parents" used in Articles 6 and 7 of this Convention does not, according to Austrian legislation on nationality, include the father of children born out of wedlock.

Austria declares that the term "lawful and habitual residence/residence légale et habituelle" used in Articles 6 and 9 of this Convention will be interpreted according to the Austrian legislation on nationality as "*Hauptwohnsitz*" (main domicile) in the sense of the Austrian legislation concerning the main domicile.

Concerning Article 6, paragraph 1, lit (b), Austria declares to retain the right that foundlings found in the territory of the Republic are regarded, until proven to the contrary, as nationals by descent only if they are found under the age of six months.

Concerning Article 6, paragraph 2, lit (b), Austria declares to retain the right to grant an alien nationality only if he:

1. Was born in the territory of the Republic and has been stateless since birth;
2. Has had his ordinary residence in the territory of the Republic for a period of not less than ten years, of which a continuous period of not less than five years must precede the granting of nationality;
3. Has not been convicted with final effect by a domestic court for certain offences […]
4. Has neither been sentenced with final effect by a domestic nor a foreign court to imprisonment of five or more years; if the offences underlying the sentence pronounced by a foreign court are also punishable under domestic law and the sentence was passed in proceedings complying with principles of Article 6 of [the ECHR];
5. Applies for naturalisation after completing the age of eighteen and not later than two years after attaining majority

Concerning Article 6, paragraph 4, lit (g), Austria declares to retain the right not to facilitate the acquisition of its nationality for stateless persons and recognized refugees lawfully and habitually resident on its territory (i.e. main domicile) for this reason alone.

Austria declares to retain the right to deprive a national of its nationality if:

1. He acquired the nationality more than two years ago either through naturalisation or the extension of naturalisation under the Law on Nationality of 1985 as amended;

[213] Source: http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=166&CM=8&DF=26/03/2012&CL=ENG&VL=1

2. Neither Section 10, paragraph 14, nor Section 16, paragraph 2, nor Section 17, paragraph 4, of the Law on Nationality 1985 as amended were applied;
3. On the day of naturalisation (extension of naturalisation) he was not a refugee as defined in [the 1951 Convention or the 1967 Protocol];
4. Despite the acquisition of its nationality he has retained a foreign nationality for reasons he is accountable for.

Austria declares to retain the right to deprive a national of its nationality, if such person, being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or the reputation of the Republic of Austria.

Concerning Article 7 in conjunction with Article 7, paragraph 1, lit (c), Austria declares to retain the right to deprive a national of its nationality, if such person voluntarily enters the military service of a foreign State.

Concerning Article 7 in conjunction with Article 7, paragraph 1, lit (f), Austria declares to retain the right to deprive a national of its nationality whenever it has been ascertained that the conditions leading to the acquisition of nationality ex lege, as defined by its internal law, are not fulfilled any more

Netherlands

Declaration contained in a Note Verbale from the Permanent Representation, handed over to the Secretary General at the time of deposit of the instrument of acceptance, on 21 March 2001

Period covered: 1/7/2001 –

With regard to Article 7, paragraph 2, of the Convention, the Kingdom of the Netherlands declares this provision to include the loss of the Dutch nationality by a child whose parents renounce the Dutch nationality as referred to in Article 8 of the Convention.

EUDO Citizenship Observatory | Robert Schuman Centre for Advanced Studies | European University Institute
Via dei Roccettini, 9 • 50014 San Domenico di Fiesole • Italy
http://eudo-citizenship.eu